

(23,806)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 655.

GREAT NORTHERN RAILWAY COMPANY, PLAINTIFF IN
ERROR,

vs.

THE STATE OF MINNESOTA *EX REL.* RAILROAD & WARE-
HOUSE COMMISSION OF THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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18040.

STATE OF MINNESOTA:

Supreme Court, April Term, 1913.

THE STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE
COMMISSION OF THE STATE OF MINNESOTA, Respondent.

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

Return.

J. D. Sullivan, Attorney for Appellant, St. Cloud, Minn.
Lyndon A. Smith, Attorney General of the State of Minnesota.
Alonzo J. Edgerton, Assistant Attorney General, St. Paul, Minn.

Filed Jan. 25, 1913. I. A. Caswell, Clerk.

2 STATE OF MINNESOTA:

Supreme Court, April Term, 1913.

THE STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE
COMMISSION OF THE STATE OF MINNESOTA, Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

Stipulation.

It is hereby stipulated and agreed that the annexed proposed case of the appellant Great Northern Railway Company in the above entitled proceeding may be presented to the court who tried said cause for settlement and allowance without further notice, and that

3 the same may be settled and allowed by the Court as the settled case herein without amendment.

Dated this 23rd day of October, 1912.

J. D. SULLIVAN,
*Attorney for Defendant-Appellant, Great
Northern Railway Co.*

LYNDON A. SMITH,
Attorney General of the State of Minnesota.
ALONZO J. EDGERTON,
Assistant Attorney General.

(Title of Cause.)

Order.

The foregoing proposed case of defendant Great Northern Railway Company in the above entitled proceeding having been duly brought on for settlement, allowance and signature before me, the Judge of said Court before whom said proceeding was tried, and the same having been duly examined by me I do hereby certify that it contains all of the evidence and exhibits produced upon the trial of said proceeding and that the same is a complete record of all the proceedings had therein, and the same is hereby settled and allowed by me as the settled case in said action and is hereby ordered filed as such herein.

Dated this 30th day of October, 1912.

C. A. NYE,
District Judge.

4

(Title.)

The Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the INSTALLATION OF SCALES IN THE STOCKYARDS at Bertha, Minnesota, a Station on the Line of the Great Northern Railway.

The above entitled matter, being an appeal by the Great Northern Railway Company from an order of the Railroad and Warehouse Commission directing the establishment of platform scales in the stockyards at Bertha, Minnesota, came on for hearing before the Court, Hon. C. A. Nye, Judge presiding, without a jury, at the April, 1912, General Term of said court held at the court house in the village of Long Prairie, Minnesota, to-wit: on April 27th, 1912.

Hon. A. J. Edgerton, Assistant Attorney General, and Hon. Ira B. Mills, Chairman of the Railroad and Warehouse Commission, appeared on behalf of the respondent; and Hon. J. D. Sullivan appeared as attorney for the appellant.

The following is a transcript of the proceedings had and testimony taken at the hearing in the above entitled matter.

Document marked by the Reporter, for identification, Respondent's Exhibit A.

Mr. EDGERTON: Respondent now offers in evidence Exhibit A, which is the original order made by the Railroad and Warehouse Commission. We would like to substitute a copy for this original order.

5 Mr. SULLIVAN: Just a moment, let me see it. We have no objection, Your Honor, and if counsel desires he may substitute a copy.

The COURT: Very well.

Thereupon, a copy of said document was marked by the reporter for identification, Respondent's Exhibit A, and was substituted in lieu of the original.

Document marked by the reporter for identification, Respondent's Exhibit B.

Mr. EDGERTON: Exhibit B is a stipulation as to the incorporation of the Railway Company and also in regard to certain cities and villages in which they have erected and maintained stock scales.

Mr. SULLIVAN: That is offered in evidence, is it?

Mr. EDGERTON: Yes.

Mr. SULLIVAN: No objection.

The COURT: Received.

Document marked by the reporter for identification, Respondent's Exhibit C.

Mr. EDGERTON: Respondent now offers in evidence Exhibit C, which is a statement prepared by the appellant showing the stock shipments from the various railroad stations within the State of Minnesota on their line of railway.

Mr. SULLIVAN: We have no objection.

The COURT: That includes the station in question?

Mr. EDGERTON: Yes, Your Honor.

Mr. MILLS: Includes all the stations that they ship stock on in Minnesota.

6 HERMAN J. RAYMOND, called as a witness on behalf of the respondent, and being first duly sworn, testified as follows:

Direct examination.

By Mr. EDGERTON:

Q. What is your full name?

A. Herman J. Raymond.

Q. Where do you live, Mr. Raymond?

A. Bertha, Minnesota.

Q. And how long have you lived there?

A. Four years.

Q. Let's see; Bertha is in this county, Todd county?

A. Yes, sir.

Q. In what business are you engaged?

A. In the meat market.

Q. And any other business in connection with the meat market?

A. That is shipping stock off and on when we have time, yes, sir.

Q. And how long have you been in such business?

A. Four years.

Q. Four years. What is the territory adjacent to Bertha adapted for; what is the territory; is it an agricultural territory in the vicinity of Bertha?

A. Natural farming.

Q. And state whether or not it is a stock raising country?

A. Yes, sir.

Q. To what extent?

7 A. Oh, I should judge about two-thirds; two-thirds of the stock—of the farm products, is stock raised around there.

Q. Is there a good deal of stock raised around there?

A. Yes, sir.

Q. And shipped from that territory?

A. Yes, sir.

Q. Would you say that it would be known as one of the principal industries in that vicinity?

A. Yes, sir.

Q. Are you acquainted with the territory lying adjacent to Bertha and the towns in that vicinity?

A. Yes, sir.

Q. Is there any other railroad that touches the city or village of Bertha?

A. Yes, sir, the Soo, which is on the west side.

Q. Let's see; how far is that from Bertha?

A. About twenty-two miles.

Q. Well, there isn't any other road, then, that runs through Bertha?

A. No, sir.

Q. The Great Northern is the only railroad facilities that you have in Bertha?

A. Yes, sir, the only railroad facilities we have is the Great Northern.

Q. Let's see; the line of railroad runs north and south through Bertha, does it?

A. Yes, sir.

Q. What is the town on the north?

A. Hewitt.

Q. How far is that from Bertha?

8 A. I always heard it was four miles by rail.

Q. Is that the nearest station on the north?

A. Yes, sir.

Q. And what is the station on the south?

A. Eagle Bend.

Q. How far is that from Bertha?

A. I was told it was nine miles.

Q. Have you ever been at the village of Hewitt and the village of Eagle Bend?

A. Yes, sir.

Q. And have you ever been down to the railroad stations?

A. Yes, sir.

Q. Are you familiar with the railroad facilities?

A. Yes, sir.

Q. At the villages of Hewitt and Eagle Bend?

A. Yes, sir.

Q. And you are also familiar with the railroad facilities at Bertha?

A. Sure.

Q. State whether or not the railroad company have at the village of Bertha stock yards?

A. Yes, sir, they have.

Q. State in a general way just what they consist of.

A. Well, it is simply a stock yard, with a shed on one side of it,

roof over it, to house cattle in cold weather; and they have two yards there partitioned, one yard and partitioned. That's all we have.

Q. And it is provided, of course, with a chute out to the track?

9 A. Yes, sir.

Q. For loading purposes?

A. Yes, sir.

Q. Is it similar to the regular stockyard facilities in other villages that you know of along the line?

A. Only there ain't no scale there; otherwise, I guess,—there are no scales and no well.

Q. There are no stock scales, then, at Bertha?

A. No, sir.

Q. Has there ever been?

A. Not that I know of; not in the last four years.

Q. Now, what do you say as to the facilities at Hewitt?

MR. SULLIVAN: I should interpose an objection to that as incompetent, irrelevant, immaterial and inadmissible; our position being in this proceeding, if the Court please, that the fact that the appellant railway company has stock scales in connection with their stockyards at other points isn't any evidence of any legal obligation to furnish them at Bertha. Merely desired to interpose the objection. Your Honor. I don't want to have it come in as if we conceded anything.

THE COURT: It is overruled. May possibly have some bearing as to where these other scales are located as to convenience for this particular territory. Of course, the fact that the railway company has scales provided at other points would not be binding one way or the other. But I will let it in for that purpose.

10 MR. MILLS: We claim, if the Court please, that the fact that they put their scales on each side and this being common territory they draw their stock from, that it is a matter of discrimination.

MR. SULLIVAN: That is the very reason I interposed this objection at this time, on account of the recital in the order of the Railway Commission that it amounted to discrimination. Our position is, unless there is some legal obligation resting upon us to furnish these stock scales, the fact that we furnished them at some other place unless the law compels it, cannot lay the presumption that we ought to furnish them at Bertha.

MR. MILLS: That is our position.

THE COURT: Objection is overruled.

MR. SULLIVAN: That is the main issue.

MR. MILLS: Yes, that is the main feature in the case.

Q. Read the question, please. (Pending question read by reporter, at counsel's request.)

A. They have a stock scale there at the yards, and have a well there.

Q. What was your answer? They have stock scales, you say?

A. Yes, sir.

Q. And what else?

A. And a well.

Q. Where are those stock scales at Hewitt in reference to the stock yards; right there at the stock yards?

A. Yes, sir, stock scale right there at the stock yards, right along-side of the stock yards.

11 Q. And how are the stock yard scales equipped; is there anything different than the ordinary scales?

A. Yes, sir; they have a fence around them, with gates in both ends; they can unload their stock and run it right on to the scales and shut the gates and weigh their stock.

Q. How does that differ from the ordinary scales, weighing scales?

A. Well, it is a convenience and satisfaction between the buyer and seller, that you can——

Mr. SULLIVAN: Just a moment; I move that be stricken out as not responsive to the question.

The COURT: Motion granted.

Mr. SULLIVAN: The question of the counsel was as to the physical characteristics.

Q. State whether or not other scales for the ordinary weighing purposes are equipped with this fence arrangement that you speak of and with the gates at the ends.

A. No, sir, they are not.

Q. In what way is the fence and the gates an advantage in weighing stock?

A. In case that they drive in a lot of cattle you can't keep them on the scale without having anything to protect them on the side from running off while you are weighing them.

Q. Now, will you briefly tell us the nature of the stock yards and facilities at Eagle Bend?

A. Yes, sir.

Mr. SULLIVAN: We will admit it is just about the same as at Hewitt, if that is satisfactory.

12 Q. Is it just about the same?

A. It is just about the same as Hewitt, yes, sir.

Q. Just about as at Hewitt. What do you say about the territory in the vicinity of Hewitt and the territory in the vicinity of Eagle Bend as being adapted to the stock raising business in comparison with the territory adjacent to Bertha?

A. I think we got much the better territory right around Bertha, far the best of it.

Q. Well, are you able to state whether or not there is more stock raised in the vicinity of Bertha than in the vicinity of Hewitt and Eagle Bend?

A. I think so.

Q. Well, now do you know whether or not it is a fact, or is that just your own opinion about it? Do you know whether or not there is?

A. Yes, there is.

Q. More stock raised.

A. More stock raised.

Q. In the vicinity of Bertha?

A. In the vicinity of Bertha than there is at Eagle Bend or at Hewitt.

Q. You say that Bertha is on the same line of railroad as Eagle Bend and Hewitt?

A. Yes, sir.

Q. State whether or not the same trains that make Hewitt and Eagle Bend also make your town of Bertha?

A. Yes, sir, they do.

Q. About, if you know, what is the population of Bertha?

13 A. Four hundred ninety-six, I think, the last census.

Q. Do you know what the population of Hewitt is?

A. No, sir.

Mr. SULLIVAN: I suppose the Court will take judicial notice of the last census.

Mr. MILLS: Yes, I will send him a map of the population.

Q. Yes, we have a map here, and the last census. In the last four years have you been actively engaged in the stock buying business?

A. That is if I had time outside of my other business.

Q. Well, you have devoted some time to the stock buying business?

A. Yes, sir, I have shipped every year; that is a couple of us together, two of us in company, we shipped.

Q. What is the manner of buying stock in Bertha and in that vicinity as to the way of arriving at the purchase price or the weight?

A. It is as a rule they all want to sell by weight, and I prefer to buy by weight myself.

Q. Well, is that the way that—

A. Yes, sir.

Q. Stock is sold and purchased in that vicinity?

A. Yes, sir, that is the usual rule.

Q. Now, in what way is the weight arrived at, in what way in purchasing stock there in that vicinity, how do you arrive at the weight?

14 A. I don't understand.

Q. You have to weigh them, I presume?

A. Sure.

Q. Have to weigh the stock?

A. Yes, sir.

Q. Now, what facilities are there at Bertha?

A. Well, we have to take them down town and weigh them on the scale in the street, about four blocks from the stock yards.

The COURT: Speak a little louder.

The WITNESS: We have to take it up town about four blocks from the stock yard to weigh it, and it is very inconvenient to do that.

Q. In what way is it inconvenient?

A. We would have to weigh the load first; for instance, you buy

a load of hogs, weigh the wagon first over there,—the whole load,—and drive over to the yard and unload, and drive back again and weigh your wagon again, and deduct your weight from the first weight in order to get the right weight. And as a rule there is always some dissatisfaction there, especially when you have muddy weather, muddy roads.

Q. In what way does that enter into it?

A. Well, the mud will hang on the wheels, and when they go back and weigh the wagon they claim they had more mud on the wagon than they had in the first place, naturally they are not getting paid for the stock which they ought to be paid.

Q. How is it in respect to weighing cattle?

A. It is the same way. If they drive them in on the road we would have to get six or seven men around the scale to keep
15 them on the scale up town; there is no fence or gates so that we could drive them on the scale and stand there so that we can weigh them, unless you go to work and tie them up and lead them on to the scale.

Q. Do you know of cattle in the immediate vicinity of your village being sold to parties dealing in cattle business in Hewitt?

A. Yes, sir.

Q. And Eagle Bend?

A. Yes, sir.

Q. Have you ever made a business of going out in the country with a view of purchasing cattle?

A. Yes, sir.

Q. Do you know of your own knowledge whether the fact of there not being stock scales in the stock yards there at the station in Bertha,—interfering or in any way influencing the sellers of live-stock in that community?

A. Yes, sir.

Q. In what way; do you know of that interfering in any way with the purchase of livestock by you?

A. Well, they prefer to weigh in the stock yard scales because they can drive them on then and weigh them right there at the yards, and the same with hogs and cattle or anything else hauled in and they can take it down and run it in on the scales and weigh it and that way it gives better satisfaction. I remember that same thing happened to me Tuesday morning; I went out to buy eight
16 head of cattle, and he said, "What's the use, I can't weigh them over there," and he said, "As soon as you get a scale at Bertha I will sell them to you, but you can't buy them now." "I can't weigh them on the scales at Bertha, unless we tie them and lead them on one by one, and I don't prefer to do that."

Mr. SULLIVAN: Now, I have not objected to this, but if he is going to give a long detailed conversation I don't know but what I shall to shorten this.

Q. Now, Mr. Raymond, state whether or not in your experience as a stock buyer during the last four years that you know of stock

sellers in that community refusing to bring their stock to Bertha on account of the stock yards not being equipped with stock scales?

A. Yes, sir, there is quite a number of them.

Mr. EDGERTON: You may inquire.

Cross-examination.

By Mr. SULLIVAN:

Q. Mr. Raymond, you are the owner of a meat market, as I understand?

A. Yes, sir; that is, part owner.

Q. You make that your principal business, do you?

A. Yes, sir.

Q. And in the operation of that meat market you go out in the vicinity of Bertha and purchase stock for local consumption there, do you not?

A. Some, yes; in fact, all of it what we use.

Q. You don't import any meats; you depend on the local supply for your meat market?

A. Yes, sir.

17 Q. Now in regard to stock shipments from Bertha, when did you and your associates ship out your last carload lot of stock?

A. Last fall.

Q. How many carloads did you and your associates ship, during the last year, from Bertha?

A. Well, I couldn't tell for sure, if it is ten,—between nine and twelve loads, something like that; I wouldn't say for sure.

Q. Who are the parties associated with you

A. Mr. Goetts.

Q. You are associated with Mr. Goetts?

A. Yes, sir.

Q. Is he one of your partners?

A. Yes, sir; that is, in the stock buying.

Q. Not in the meat market business?

A. No.

Q. Now, Mr. Raymond, when you speak of a stock scales, such as is at Hewitt, and as is also at Eagle Bend, you mean an ordinary platform scale such as they have, public scales in many cities and villages, except that they have a fence in with gates so that you can keep stock there?

A. Yes, sir.

Q. That is what you mean, don't you?

A. Yes, sir.

Q. This stock scale that you speak of, or that you saw at Hewitt for instance, that was not connected by a side-track or anything with the side-track or main track of the railway company, was it?

A. No, it is on the outside of the yard.

18 Q. Outside of the yard?

A. Just simply alongside of the cattle chute leading towards the chute.

Q. But there is no switch or track passing up to it or over it, not like a track scale in any sense?

A. No, sir.

Q. Now, as I understand, what you complain about is, for instance when you go out to buy stock and the farmers bring them in, that in order to find out what the weight is so that you can pay and settle with those farmers, you think you ought to have this stock scale there for that purpose?

A. Yes, sir.

Q. Now, some of those cattle that you buy in that way you may ship out, and some you may use for local consumption, isn't that the idea?

A. Very seldom we buy any or take any out of the yard, where we buy to ship.

Q. Well, you say you get your stock for local consumption?

A. Yes, sir.

Q. All local; you don't import any. Well, do you buy that by the head or by the pound?

A. Buy it by the head.

Q. Then as I understand you, when you buy for meat market for local consumption you buy by the head?

A. Yes, sir; once in a while we buy over the scales if we can't get it by the head.

Q. Then your idea is you would like your stock yard scale there, or stock scale as we call it, for this purpose of weighing anything the farmers would bring in there to sell to you whether it is for shipment or local consumption?

A. No, sir; I have arranged for one to put in this summer for myself.

Q. Now, when you buy from farmers stock that you and your associate want to ship out, you want this scale there so that you can weigh that stock as a basis for settlement with the farmer?

A. Yes, sir.

Q. The freight rate is not based on that weight in any way, is it?

A. Well, we have agreed to pay according to weight.

Q. Well, I say for instance when you go to Hewitt with your farmer, you buy half a dozen head of stock, you take them to the Hewitt stock scales and you weigh that stock and you settle up with the farmer; do you get any certificate or anything of the weight of that stock that you send with the stock either as a basis for its weight or a basis for the freight rate or anything of that kind?

A. No, we have to take that from the Great Northern.

Q. You have to take that from the railroad track scale afterwards, haven't you?

A. Yes, sir.

Q. So that the sole purpose of a stock scale there is merely as a matter of convenience between buyer and seller of the stock to find out what the weight is; ain't that true?

A. Yes, sir.

20 Q. That is it; and this stock scale at Hewitt and the similar one at Eagle Bend is not connected with the railroad busi-

ness, except as a matter of convenience and accommodation there, close to the stock yards?

A. That is it.

Q. That is it; but for instance we will take Hewitt again; you went up there to buy a carload of stock, and you buy we will say ten head from John Smith and you buy five head more from John Jones and you fill up your carload of stock from various parties; as you buy you weigh up each man's stock on the stock scale to settle with him, and then when your car is loaded you turn it over to the railroad company?

A. Yes, sir.

Q. And it is shipped down to destination, to the stock market, for instance South St. Paul, and your stock is weighed there?

A. Yes, sir.

Q. Is it weighed at any point before that?

A. That is more than I can tell you. It used to be weighed at Sauk Center.

Q. Well, at any point where they have a track scale; ain't that right?

A. Yes, sir.

Q. Now, that is the process, that is the method of handling stock?

A. Yes, sir.

Q. I say, assuming you are doing business at Hewitt or Eagle Bend where they have these stock scales; that is the way it is operated?

A. Yes, sir.

21 Q. So that the weights you get there at the stock scales is a matter between you and the farmer you buy from?

A. Yes, sir.

Q. And has nothing to do with the weights that you get afterwards from the railroad company, for instance at Sauk Center or wherever there is a track scale?

A. No.

Q. That is right. Do you think, Mr. Raymond,—or, strike that out. Is there pretty keen competition at Eagle Bend for stock?

A. What do you mean?

Q. I mean are there various buyers there; pretty keen competition?

A. Yes, sir, there is.

Q. Pretty keen competition up at Hewitt?

A. Yes, sir.

Q. Is -here very much competition at Bertha?

A. Well, these fellows from Eagle Bend and Hewitt can come right down there and pick it right up next to town.

Q. Well, I mean right there among yourselves, have you many buyers?

A. No, there is only two of us there.

Q. You and Goetts?

A. Yes, sir.

Q. And you are co-partners?

A. Yes, sir; but farmers ship out once in a while.

- Q. Don't you think that the fact that you and Goetts have control of the market might have some effect on the amount of stock
22 you get as regards Hewitt and Eagle Bend?

A. Not at all, no sir.

Q. Not at all?

A. No, sir.

Q. I think that's all.

(No answer.)

Redirect-examination.

By Mr. EDGERTON:

Q. In shipping your stock out do you weigh it before you ship it?

A. No, sir; we have no chance to weight it before we ship it out, after we receive the stock over there we have no chance to weigh it.

Mr. SULLIVAN: Well, I presume he means there is no track scales.

Mr. MILLS: No, he means he has to take them out on the other scale.

Mr. SULLIVAN: I don't think so.

Q. What is the practice, if you know, of the stock buyers in weighing out their stock before?

A. As a rule in stock yards where they have scales they always weigh their stock before they ship out, but we have no chance to do it.

Q. Do you know whether that is the practice at Hewitt and Eagle Bend?

A. Yes, sir; at Hewitt and Eagle Bend, and they tell me at Hewitt and Eagle Bend they weigh out everything before they load it the next morning.

Q. Yes; the amount of freight that you pay to the railroad company is based upon the weight, is it not?
23

A. Yes, sir.

Q. Now are there any track scales at Bertha?

A. No, sir.

Q. Are there any facilities there for weighing the stock at all?

A. Only up the street.

Q. Well, the railroad company maintain no—

A. No, sir.

Q. Facilities for weighing this stock?

A. No, sir, not at all.

Q. Do you know now where the stock is weighed by the railroad company?

A. I couldn't state for sure where it is weighed; whether it is weighed at St. Cloud or whether it is weighed at Melrose, I couldn't tell you.

Q. Where is your market place?

A. South St. Paul.

Q. South St. Paul entirely?

A. Yes, sir.

Q. That's all.

(No answer.)

Recross-examination.

By Mr. SULLIVAN:

Q. Just a moment, Mr. Raymond; when you speak of the shipper re-weighing his stock before shipping you don't mean that that is after they are loaded on board cars, do you?

A. No, sir.

Q. There is no track scale at Hewitt?

A. No, sir.

24 Q. Nor at Eagle Bend?

A. No, sir, not that I know of.

Q. Well, do you mean that after the farmer delivers the cattle to you and you weigh them, that after he is gone and before you load in cars you re-weigh them?

A. The next morning, before we load them; I have been told that by both the buyers up at Hewitt and Eagle Bend they weigh there after, so they know how many pounds go down there.

Q. That is simply for the purpose of keeping track of the shrinkage as between them and whoever they sell to?

A. I suppose, yes.

Q. But that has nothing to do with the freight rate, that weighing?

A. No, sir.

Q. That is taken from the weight which is taken at South St. Paul and afterwards shows up in the expense bill on which the settlement is made, doesn't it?

A. Yes, sir.

Mr. MILLS: They don't pay any freight on shrinkage.

Mr. SULLIVAN: The point is, as I understand the situation, that the shipper pays freight according to the weight when it reaches South St. Paul.

Mr. MILLS: That is right.

Q. Now, as a matter of fact, Mr. Raymond, at Bertha, there is a public scale there owned by Mr. Wetzel?

A. Yes, sir.

25 Q. That is about how far from the stock yards?

A. Oh, I should judge about four blocks; three or four blocks.

Q. He holds himself out open to the public to weigh anything that anybody wants weighed, if they pay his charges?

A. Yes, sir.

Q. I believe that's all. Or, this man Wetzel,—are his charges fair and reasonable there?

A. Oh, yes.

Q. That's all.

(No answer.)

Redirect examination.

By Mr. EDGERTON:

Q. Do you know anything about the scales up town, as to whether or not they are kept in proper order for weighing?

A. Yes, sir, they ain't,—sometimes they are correct, accurate, and sometimes they ain't; they ain't kept accurate all the time. We had to stop and clean them out ourselves last fall, when we took in cattle there in the morning.

Q. Do you know any other occasions when you have had trouble with those scales?

A. Ourselves?

Q. Yes.

A. Yes, sir.

Q. How is that; often or seldom that you have trouble?

A. Oh, it ain't so very often. It is seldom we have trouble.
26 If the scale is accurate we don't have any trouble. But that is only for the convenience of weighing it, but there is times it ain't accurate, you can't weigh everything you bring in.

Q. That's all.

(No answer.)

Recross-examination.

By Mr. SULLIVAN:

Q. I suppose, Mr. Raymond, that would be true of a scale of a stock yard, unless there was somebody there to look after it and keep it in shape, wouldn't it?

A. Sure.

Q. This public scale of Mr. Wetzel's, they weigh hay and potatoes and lots of stuff on there, don't they?

A. Yes, sir, that is the only scale we have now at the present time to weigh on.

Q. I believe that's all.

(No answer.)

Mr. SULLIVAN: Now, we are willing to admit that this is the exact situation.

Mr. EDGERTON: Well, we understand from this other stock buyer that buys from Hewitt, that outside parties say they would rather take their stock to Hewitt.

Mr. SULLIVAN: I thought that was covered by Mr. Raymond's testimony.

Mr. EDGERTON: Well, we have one witness we want to call.

Mr. SULLIVAN: I say I was willing to admit that Mr. Raymond's testimony is true; he has already covered that feature,
27 that parties would rather go to Hewitt and Eagle Band.

Mr. EDGERTON: Well, it will be short.

T. E. OSBORN, called as a witness on behalf of the Respondent, and being first duly sworn, testified as follows:

Direct examination.

By Mr. E-GERTON:

Q. What is your name?

A. T. E. Osborn.

Q. Where do you live?

A. I live in Stowe Prairie, near Hewitt.

Q. In what business are you engaged, Mr. Osborn?

A. Well, sir, in several branches of business. I buy stock, and also manage a farm a few miles out of town,—two miles out,—two and a half.

Q. Where is your shipping point on the railroad for stock?

A. Hewitt.

Q. Do you go out through the country adjacent to Hewitt in purchasing stock?

A. Yes, sir, we cover quite a territory in there.

Q. Are you acquainted with the territory in the vicinity of Bertha?

A. Yes, sir.

Q. Is that a part of the territory you make?

A. Yes, sir.

Q. How far is that from Hewitt?

A. By rail four miles, but by wagon road about five or five and a quarter.

28 Q. What do you say about the territory around Hewitt and Bertha as to being a stock raising country?

A. Well, it is gradually improving. When I commenced buying stock there some years ago it took us quite a while to pick up a car of stock, but now we pick it up quite readily there. There is considerable stock raised there.

Q. It is a growing industry in that vicinity?

A. Yes, sir.

Q. Now, in brief will you tell us the facilities afforded, just briefly, in comparison with the facilities at Bertha, if you know?

A. Well, the facilities for handling that stock, you mean?

Q. Yes, in reference to the stock yard scales, in particular?

A. We never have loaded out of Bertha.

Q. You never have loaded out of Bertha?

A. No, sir.

Q. Do you know whether or not they have stock yard scales there?

A. I know they have not, there, stock yard scales.

Q. And they have at Hewitt?

A. Yes, sir.

Q. Do you know in going among the farmers whether or not there is any preference to trading at a point where they are provided with scales?

A. Only this much, that I bought a carload of stock in southwest of Bertha, I think to the best of my recollection it was in
29 October, a year ago last October, and it occurred to me that it would be better for those farmers if I would load out of Hewitt,—out of Bertha; and I suggested to them,—there was three or four of us together,—I had bought them,—there was quite good roads,—I says, "I can take that stock in at Bertha if it will be any better for you boys," and one fellow says, "No, I would rather bring my stuff to Hewitt because we know we get our weights at Hewitt, while over here those scales are bum." And they talked among

themselves and agreed that they would rather bring the stock to Hewitt, and they did so. I didn't load out of Bertha; I loaded from Hewitt.

Q. Was the distance shorter to Bertha than it was to Hewitt?

A. Yes, sir, about three miles.

Q. Now, what do you say as a stock buyer as to it being an advantage to have scales in connection with the stock yards at the depot, in comparison with a station that is not equipped with stock scales?

A. I think it has decidedly the advantage.

Q. In what respect?

A. In respect that if you haven't a scale at your yard it is almost impossible to weigh a band of sheep; it is impossible without loading them into a wagon because you can't hold them on a scale, while at a stock yard if you have scales there all you have to do is to open your gate and drive the yard full. We always run sheep out into the yard and then weigh out of the chute, and run them into the yard and weigh them out a bunch at a time. It

30 is also the same way with weighing calves or anything like that. It is a great deal handier to weigh at your scales right at the yard.

Q. Now, what is the practice in weighing out when making your shipments to market?

A. We weigh out each morning that we load.

Q. Is that made upon the scales there at the stock yards?

A. Yes, sir.

Q. What is the purpose of that?

A. Purpose is to determine the shrink that we have had in the yard; and another thing, there is a great deal of stock that is bought by lump, which if we didn't have a scale there,—what I mean by "lump," we just buy it so much for the head of stock,—and if we didn't have a scale there so that we could weigh that stock we would have to simply weigh it by guess work,—guess what is was going to weigh; consequently, we couldn't tell what our shrink was below, nor where we was at in buying.

Q. Is it not also true that in weighing the stock you would know and determine how much weight you were delivering to the railroad company for shipping?

A. Yes, sir; we always know how much weight we deliver to them, although we have to take the weight from the state scales in the yard in our returns.

Q. Yes.

A. But it gives a chance to figure on it in that way. It is done principally for our own convenience.

31 Q. That's all.

(No answer.)

Cross-examination.

By Mr. SULLIVAN:

Q. There is nothing to prevent you, Mr. Osborn, if you desired

to weigh that stock anywhere you had a mind before delivering it to the railroad company, is there?

A. No, sir.

Q. Now, your experience with those farmers up there in the vicinity of Bertha in preferring to go to Hewitt with stock was that they were a little skeptical about that scale at Bertha?

A. Yes, sir, that was my experience; that is what I inferred from the farmers, yes; maybe they were skeptical about the scale at Bertha.

Q. In other words, if they were satisfied there was a public scale that gave the correct weight, they would not find fault?

A. Probably not; I couldn't answer whether they would or not, but I took it that that was the fault they found.

Q. Now, outside of the stock yard scales, the facilities at Bertha are just about the same as at Hewitt?

A. I should think they are, yes, sir.

Q. Now, so far as your freight rate is concerned, you take your weights on that from South St. Paul or somewhere where it is weighed on track scales in carload lots, don't you?

A. No, sir, our charge is based on the capacity of the car; 32 if we don't load, we have to pay that weight anyway.

Q. I mean so far as weights are concerned, you get the track scale weight from below?

A. Yes, sir.

Q. That is, from the State scale there?

A. Yes, sir.

Q. Now, in regard to the buying of stock, you say you buy largely on estimates, don't you?

A. Yes, sir, we do.

Q. By that, what you mean is to buy by the head?

A. Yes, sir.

Q. Allow a farmer for a certain steer, and you say, "I will give you twenty, or forty dollars," whatever it may be, without regard to the weight?

A. Yes, sir.

Q. And in cases of that kind, of course, the farmer is not interested in whether you ever weigh it?

A. No, sir, it is immaterial to him whether we ever weigh it.

Q. And so far as the farmer is concerned, on the part of the buyer, all that he is concerned in is that he gets a correct weight somewhere on those that he sells by weight?

A. That is all that he is interested in, yes, sir.

Mr. MILLS: Now, there is no State scales at South St. Paul, but all the track scales of the railroad are under the supervision of the State.

Mr. SULLIVAN: That is the Commission.

Mr. MILLS: Yes, the weighing upon them I think is done 33 by the Western Weighing Association.

Mr. SULLIVAN: Yes, that may be corrected, that these so-called track scales, they are not State scales but they are all subject to inspection by the Railroad and Warehouse Commission.

Mr. MILLS: Yes, they are; and the weighing is done by the Western Weighing Association.

The WITNESS: I supposed it was done by the State.

Mr. MILLS: No. Grain is.

Mr. SULLIVAN: I think Judge Mills is undoubtedly correct. When I spoke of the State, why, we meant they were subject to State inspection.

Mr. MILLS: Yes, that is it.

Mr. SULLIVAN: I believe that is all.

JAMES JOHNSTON, called as a witness on behalf of the respondent, and being first duly sworn, testified as follows:

Direct examination.

By Mr. EDGERTON:

Q. What is your full name?

A. James Johnston.

Q. And where do you live?

A. I live at Bertha, Todd County, Minnesota.

Q. And how long have you lived there?

A. Thirteen years.

Q. Have you ever had anything to do with stock marketing at Bertha, stock sales and marketing and purchasing of stock?

34 A. Yes, I have sold stock at Bertha; delivered them there, I have delivered them at Eagle Bend, and I have delivered them at Hewitt.

Q. Now, you are, of course, familiar then with the facilities provided at each one of the places that you have named?

A. Yes, sir.

Q. Now, state, if you will, the difference in the facilities provided at Bertha, with those at Hewitt and Eagle Bend.

Mr. SULLIVAN: Just a moment, Your Honor; we concede what Mr. Osborn and Mr. Raymond have testified to as being the correct situation.

Mr. EDGERTON: All right.

Mr. SULLIVAN: In regard to the facilities.

Q. Now, what do you say, Mr. Johnston, if you know, in reference to the advantage of having stock yard scales in connection with the stock yards at a station?

A. Well, it would be a great advantage for a farmer like myself, in a stock yards; for instance, I want to take in a bunch of hogs or a bunch of cattle or a bunch of sheep; the way it is a present I have got to load them in order to weigh them because our scales is on the public street and there is no railing around them nor gates nor chute to drive stock in on to them, and if there was a yard we could drive them down in and arrange to weigh them on the yard scales at the stock yards, which we could do with less trouble and more convenient.

Q. Now, there has been some reference to the scales in
35 Bertha up town. Do you know the scales that have been
referred to?

A. Yes, sir.

Q. What do you say about those scales?

A. Well, I think the scales are all right, unless they should be out of order some way. I have sold over them and I have bought over them, and as far as being accurate in their weights I can't say anything against them except they were out of order. I did see them this spring when they were out of order or claimed to be by their owner; but for what I have weighed over them only being unhandy to get to them, get your stock to them if they are loose. If your stock is tied up and you are delivering them you can lead them on; if they are loose it is practically impossible to weigh a bunch of stock that you drive in on those scales.

Q. In the manner you have stated; and they are not equipped with stock yard scales such as they have at Hewitt and Eagle Bend?

A. Yes, sir, they set there on the street platform scales without any gate or railing of any kind to hold the stock while they are being weighed, and when a bunch of stock is in the street it is practically impossible to weigh them without you catch them and put them on and hold them on it.

Q. Would you say that that is such an advantage that it would naturally influence the farmer or stock seller in taking his stock a longer distance to a market that was equipped such as you have stated?

36 A. Yes, sir the farmers in my vicinity object very much to taking their stock down there on account of the sales. I always, oftentimes, buy enough to fill a car myself and take them myself. And in that way the farmers make objections to the scale there.

Q. Do you know of specific instances in which that objection has been made to you in that vicinity?

A. Yes, sir, I have had farmers tell me they wouldn't weigh on those scales, and tell me "to go and weigh them on your own platform scales; take the hogs out of the pen, and we will take your weight," they will tell me.

Q. That's all.

(No answer.)

Cross-examination.

By Mr. SULLIVAN:

Q. Bertha is an incorporated village, isn't it?

A. Yes, sir.

Q. With a village organization?

A. I believe so, yes, sir.

Q. Do you know of any reason why the village of Bertha through its corporation if it desires to draw the trade of farmers cannot establish a public scale for weighing hogs and cattle and sheep?

A. I don't think there is any law to prevent them.

- Q. That is exactly the idea. Now when you speak about convenience of weighing on a scale where there is a fence and gates, you mean convenience as between the farmer who sells that stock and the stock buyer who buys it?
- 37 A. Well, it is the convenience of the parties handling stock.
- Q. Yes, irrespective of whether that stock is shipped or whether it is eaten up in Bertha or what is done?
- A. Well, the most of the stock taken in there is shipped there.
- Q. Don't you eat anything at Bertha?
- A. We do, but we don't take a drove like Swift.
- Q. This meat market man, Mr. Raymond, says he gets all his stuff for his meat market right around Bertha?
- A. Yes, there is quite a lot raised right around Bertha.
- Q. I believe that's all.
- (No answer.)

Redirect examination.

By Mr. EDGERTON:

- Q. Just a moment. Senator Johnston wants to correct his testimony. What do you say, Mr. Johnston, about the territory adjacent to Bertha as compared with the territory adjacent to Hewitt and Eagle Bend in reference to being a stock raising country?
- A. We consider it better adjacent to Bertha than either of those places.
- Q. Well, how is it, what is the fact, is there more stock raised in the vicinity of the Bertha than at either of those other places mentioned?
- 38 A. I certainly believe there is. Our creamery shows so. We make about as much butter as both of the creameries; the sales, which the records here will show,—with Mr. Lee,—that our creamery pretty near makes as much as the two of them. We certainly have got more stock, or we couldn't do it.
- Q. Is there anything further you care to say?
- A. No.

Recross-examination.

By Mr. SULLIVAN:

- Q. Just a moment. You speak about your creamery business at Bertha. The presumption is you have a better buttermaker and pay better prices?
- A. I don't know.
- Q. You are pretty enterprising fellows at Bertha, ain't you?
- A. We think we have got pretty nice people around Bertha, yes sir.
- Q. Yes. That's all, Senator.
- (No answer.)

Mr. EDGERTON: That is all. That is our case.

Mr. SULLIVAN: I think, if the Court please, that covers the situation. I don't know that we have anything to add. I think those

exhibits cover the general situation, and I think these gentlemen have covered the facts in regard to weighing in and weighing out, and the fact that these so-called stock scales are not connected with our trackage and made the basis for the freight rates; I think it is all covered. That is what I had Mr. Nicholson here for, but those men have been very fair about it and I think we have nothing to add. I would suggest instead of arguing this now to the Court, could we submit it afterwards.

The COURT: Yes, I would prefer written arguments.

Mr. EDGERTON: Yes, that is satisfactory.

Mr. SULLIVAN: Yes, it is an important case. It raises the question for the first time in this state.

By agreement of the Court and counsel, case to be submitted on briefs; respondent to submit its brief in twenty days, appellant to answer the same in twenty days, and respondent to reply in ten days thereafter.

"RESPONDENT'S EXHIBIT A."

Before the Railroad and Warehouse Commission of the State of Minnesota.

In the Matter of the Installation of Scales in the Stockyards at Bertha, Minnesota, a Station on the Line of the Great Northern Railway.

This matter was taken up by correspondence with the Great Northern Railway Company, on the complaint of Louis Bluhm, and after investigation, the Commission finds the following facts:

That the shipment of livestock from Bertha for the past six years have been:

| | |
|------|---------|
| 1906 | 22 cars |
| 1907 | 17 cars |
| 1908 | 9 cars |
| 1909 | 18 cars |
| 1910 | 25 cars |
| 1911 | 27 cars |

That shipments from stations on either side of the station of Bertha, are as follows:

| | | |
|------------|------|---------|
| Eagle Bend | 1909 | 48 cars |
| " " | 1910 | 51 cars |
| " " | 1911 | 51 cars |
| Hewitt | 1909 | 27 cars |
| " " | 1910 | 38 cars |
| " " | 1911 | 47 cars |

That Hewitt, a station on one side, and four and one-half miles from Bertha, has a six ton scale, and Eagle Bend, on the other side of Bertha, and seven miles therefrom, has a six ton scale. That probably accounts for the fact that Bertha does not show up as

much business as these stations, for they have better facilities for the purchasing of stock. It seems to the Commission that this is a plain case of discrimination against Bertha, and that it ought to be furnished with the same facilities for purchasing stock as the stations on either side of it.

The Great Northern Railway Company has established the practice of putting in scales at different points on its road, and allowing shippers to use them to weigh stock for the purpose of purchasing it, and so long as it does this from one station, and that station is so situated that it is in common territory with another station without these facilities, it must necessarily draw the greater share of business to the territory having scales.

The Commission finds that the amount of stock shipped from this station as well as the discrimination herein referred to, make it reasonable and necessary that the Great Northern Railway Company erect at least a six ton scale for the weighing of stock in its stockyards at Bertha, and orders that said scale be erected within forty-five days from the service of this order upon it.

By the Commission,

A. C. CLAUSEN,
Secretary.

Dated at St. Paul, Minn., October 26th, A. D., 1911.

Notice of appeal to the District Court in and for the County of Todd, State of Minnesota, from the foregoing order was filed with the Commission on the 22nd day of November, 1911. Due returns were made by the Commission to the above named Court on the same day and date by mailing a certified copy of the findings of fact and order of the Commission, in accordance with law.

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RESPONDENT'S EXHIBIT B."

STATE OF MINNESOTA,

County of Todd, Seventh Judicial District, ss:

District Court,

STATE OF MINNESOTA, Plaintiff,

VS.

GREAT NORTHERN RAILWAY COMPANY, Defendant.

On appeal from an order of the Railroad and Warehouse Commission of the State of Minnesota, dated October twenty-sixth, A. D. 1911, requiring Great Northern Railway Company to establish stock scales in their stockyards at the station of Bertha, in said county.

For the purposes of the trial of this case it is stipulated that Exhibit "A," hereto annexed, is a correct statement of the stations on the line of the defendant railway company in the State of Minnesota that are provided with stock scales, and that all such scales are of six ton capacity.

It is further stipulated that the defendant is a corporation organized under the Laws of the State of Minnesota.

M. L. COUNTRYMAN AND

J. D. SULLIVAN,

Att'ys for G. N. Ry. Co.

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EXHIBIT "A."

*List of Great Northern Railway Stations at Which Stock Scales
Were Located June 30th, 1910.*

| | | |
|-----------------|-----------------|---------------|
| Appleton, | Forreston, | Mayer, |
| Argyle, | Graceville, | Maynard, |
| Ashby, | Green Valley, | Marshall, |
| Bellingham, | Hancock, | McIntosh, |
| Benson, | Hasty, | Milaca, |
| Brown's Valley, | Hawick, | Montrose, |
| Campbell, | Hereford, | Morris, |
| Chokio, | Herman, | Nassau, |
| Clara City, | Hewitt, | New Germany, |
| Clearwater, | Hills, | New London, |
| Cold Springs, | Holloway, | Pennock, |
| Cottonwood, | Hutchinson, | Princeton, |
| Dalton, | Kerkhoven, | Russell, |
| Danvers, | Lester Prairie, | Rushton, |
| Donnelly, | Long Prairie, | Silver Lake, |
| Eagle Bend, | Lorne, | Spicer, |
| Fergus Falls, | Lynd, | St. Michaels, |
| Florence, | Manley, | Torah. |

Scales—all 6 ton capacity.

St. Paul, Minn., April 24, 1912.

Statement Showing Number Cars Stock Shipped From Stations in Minnesota July 1st, 1910, to June 30th, 1911.

| Station. | | Station. | | Station. | |
|---------------------|----|--------------------|----|-------------------|-----|
| Andover | 1 | Melrose | 37 | Montrose | 41 |
| Cedar | 8 | Souk Center | 57 | Waverly | 63 |
| Bethel | 17 | West Union | 29 | Howard Lake | 76 |
| Isanti | 8 | Osakis | 83 | Cekato | 97 |
| Cambridge | 44 | Nelson | 20 | Dassel | 51 |
| Grandy | 5 | Alexandria | 20 | Darwin | 3 |
| Braham | 28 | Garfield | 31 | Litchfield | 175 |
| Grasston | 30 | Brandon | 48 | Grove City | 84 |
| Cornell | 6 | Evansville | 42 | Atwater | 87 |
| Brook Park | 6 | Melby | 29 | Kandiyohi | 66 |
| Hinckley | 13 | Ashby | 49 | Willmar | 112 |
| Sandstone | 5 | Dalton | 27 | Pennock | 53 |
| 45 | | | | | |
| Partridge | 1 | Fergus Falls | 46 | Kirkhoven | 79 |
| Kerrick | 1 | Carlisle | 1 | Murdock | 31 |
| Duquette Spur | 2 | Rothsay | 56 | De Graff | 42 |
| Holyke | 2 | Lawndale | 1 | Benson | 80 |
| Foxboro | 3 | Anoka | 9 | Hancock | 101 |
| Duluth | 32 | Elk River | 12 | Morris | 79 |
| Carlton | 1 | Big Lake | 1 | Donnelly | 32 |
| Scanlon | 1 | Clear Lake | 38 | Herman | 74 |
| Cloquet | 16 | Sauk Rapids | 1 | Norcross | 7 |
| Flint | 1 | Parent | 7 | Tintah | 13 |
| Swan River | 4 | Foley | 99 | Campbell | 27 |

| | | | | | |
|--------------------|----|----------------|----|-----------------|----|
| Grand Rapids | 6 | Ronneby | 7 | Doran | 9 |
| Cohasset | 3 | Oak Park | 14 | Danvers | 43 |
| Deer River | 21 | Foreston | 25 | Holloway | 26 |
| Ball Club | 2 | Milaca | 58 | Appleton | 6 |
| Bena | 10 | Bock | 3 | Louisberg | 35 |

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| | | | | | |
|-------------------------|-----|---------------------|----|----------------------|----|
| Cass Lake | 10 | Ogilvie | 26 | Bellingham | 48 |
| Goodland | 1 | Brunson | 2 | Nassau | 20 |
| Nashwauk | 2 | Mora | 22 | Alberta | 18 |
| Kelley Lake | 1 | Quamba | 9 | Chokio | 27 |
| Hibbing | 11 | Hulton's Spur | 3 | Johnson | 29 |
| Chisholm | 6 | Zimmerman | 44 | Graceville | 22 |
| Buhl | 1 | Princeton | 87 | Barry | 12 |
| Kinrose | 4 | Pease | 1 | Beardsley | 49 |
| Virginia | 9 | Cold Springs | 23 | Brown's Valley | 50 |
| St. Paul | 82 | Richmond | 34 | Raymond | 70 |
| So. St. Paul | 295 | Roscoe | 11 | Clara City | 85 |
| Minn. Tfr. | 255 | Hawick | 10 | Maynard | 57 |
| Fair Grounds | 126 | New London | 58 | Granite Falls | 9 |
| Twin City St. Yds. | 3 | Spicer | 23 | Lorne | 14 |
| Minneapolis | 79 | Round Prairie | 1 | Hanley Falls | 17 |
| Wayzata | 2 | Long Prairie | 81 | Cotton Wood | 69 |

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| | | | | | |
|-----------------------|----|-------------------|----|--------------------|----|
| St. Bonifacious | 76 | Browerville | 31 | Green Valley | 9 |
| Mayer | 34 | Clarissa | 34 | Marshall | 60 |
| New Germany | 38 | Eagle Bend | 51 | Lynd | 49 |
| Lester Prairie | 83 | Bertha | 27 | Russell | 80 |

| | | | | | |
|-------------------|-----|----------------------|----|--------------------|-----|
| Silver Lake..... | 61 | Hewitt | 47 | Florence | 45 |
| Hutchinson | 161 | Wadena | 4 | Ruthton | 90 |
| Osseo | 80 | Sebeka | 49 | Holland | 41 |
| Albertville | 57 | Menahga | 40 | Pinney | 1 |
| Monticello | 70 | Park Rapids | 15 | Pipestone | 55 |
| Enfield | 7 | Nevis | 1 | Ihlen | 29 |
| Hasty | 38 | Akeley | 9 | Jasper | 414 |
| Clearwater | 28 | Walker | 1 | Manley | 19 |
| St. Cloud | 38 | Erharts | 1 | Hills | 75 |
| St. Joseph | 35 | Pelican Rapids | 63 | Breckenridge | 3 |
| Avon | 14 | Long Lake | 10 | Erdahl | 1 |
| Albany | 62 | Maple Plain | 43 | Barnesville | 26 |
| Freeport | 44 | Delano | 68 | Glyndon | 5 |
| Felton | 3 | Kent | 10 | Roseau | 27 |
| Borup | 4 | Wolverton | 3 | Mentor | 6 |

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| | | | | | |
|------------------|----|----------------------|----|----------------|----|
| Wheatville | 1 | Noyes | 7 | Warroad | 2 |
| Ada | 31 | Comstock | 1 | Badger | 32 |
| Lockhart | 20 | Douglas Siding | 1 | Erskine | 1 |
| Beltrami | 10 | Georgetown | 4 | McIntosh | 30 |
| Kittson | 1 | Perley | 26 | Fosston | 72 |
| Crookston | 29 | Halstad | 14 | Bagley | 17 |
| Euclid | 7 | Shelly | 25 | Shevlin | 7 |
| Angus | 1 | Neilsville | 2 | Solway | 1 |
| Warren | 3 | Climax | 24 | Wilton | 4 |
| Argyle | 30 | Red Lake Falls | 23 | Bemidji | 57 |
| Stephen | 42 | Wylie | 10 | Fisher | 17 |
| Donaldson | 13 | St. Hilaire | 13 | Mallory | 1 |

| | | | | | |
|-------------------|----|---------------------|----|-----------------------|----|
| Kennedy | 4 | Thief R. Falls..... | 2 | East Grand Forks..... | 16 |
| Hallock | 30 | Holt | 6 | Baker | 1 |
| Northcote | 1 | Middle River | 28 | Sabin | 1 |
| Humboldt | 3 | Stratheona | 8 | Moorhead | 6 |
| St. Vincent | 1 | Greenbush | 33 | Hendrum | 26 |

No shipments from stations not shown herein.

In the Matter of the Installation of Scales in the Stock Yards at Bertha, Minnesota, a Station on the Line of the Great Northern Railway.

Findings.

The above entitled matter, being an appeal by the Great Northern Railway Company from an order of the Railroad and Warehouse Commission directing the establishment of platform scales in the stockyards at Bertha, Minnesota, came on for hearing before the undersigned District Judge, without a jury, at the April, 1912, General Term of the above named Court, held at the court house in the village of Long Prairie, Minnesota, to-wit: on April 27th, 1912.

Mr. Alonzo J. Edgerton, Assistant Attorney General, and

Mr. Ira B. Mills, Chairman of the Railroad and Warehouse Commission, appeared on behalf of the respondent;

Mr. J. D. Sullivan appeared as attorney for the appellant.

After arguments submitted in writing by the respective counsel, and upon due consideration the Court finds:

Findings of Facts.

I. That the village of Bertha is duly incorporated and is located on the Great Northern Line of Railway in said Todd county; that the country tributary to said village of Bertha is adapted
50 to the raising of live stock and that the raising of such stock for shipment is an important and growing industry in that locality.

II. That the village of Hewitt and Eagle Bend are also situated upon said railway and are located four and one-half ($4\frac{1}{2}$) miles and seven (7) miles respectively from said village of Bertha; that they are located within the same common territory and the country tributary thereto is adapted to like purposes as that tributary to said village of Bertha.

III. That covering a period of three years immediately prior to the commencement of this proceeding there was shipped from said station of Bertha seventy (70) cars of live stock while during the same period there was shipped from the station of Hewitt one hundred sixty-two (162) cars of livestock and from Eagle Bend one hundred and fifty (150) cars of live stock.

IV. That appellant Railway Company maintains at said stations of Hewitt and Eagle Bend as well as at fifty-two (52) other stations along its lines in this state, stock scales similar in size and arrangement to those specified by the order of the Railway and Warehouse Commission in this proceeding, all of which scales are maintained in connection with stockyards furnished by said Railway Company at said various stations; that at least at thirteen (13) of the fifty-four (54) stations above referred to the stock shipments for the year
51 ending June 30th, 1911, were not more than at the station of Bertha and that at least at ten (10) of said stations the shipments were less than at Bertha.

V. That during the year 1909, eighteen (18) cars of stock was shipped from said station of Bertha, twenty-five (25) cars in 1910, and twenty seven cars in 1911; that during all of said time appellant has maintained a stock yard at said station, but has never established or maintained a stock scale at said point; that it is and has been at all times at Bertha, and other stations, in that locality customary to weigh stock both at the time of purchase by the dealer and also at the time of shipment.

VI. That stock scales such as are specified in the order appealed from, are a facility used in the buying, marketing and shipping of live stock and without such scales said business is rendered more difficult and inconvenient and that as between the shipper and the appellant such scales are necessary in order to ascertain the lawful freight charges to be paid by the shipper and to enable appellant to properly furnish the shipper with the bill of lading required by statute.

VII. That during all the times mentioned in the foregoing findings of fact, appellant was common carrier of freight and passengers within the State of Minnesota and subject to all lawful rules and regulations prescribed by the Railroad and Warehouse Commission of said State.

52

Conclusions of Law.

I. That the order of the Railroad and Warehouse Commission dated October 26th, 1911, and herein appealed from is in all things lawful and reasonable and said order is hereby affirmed.

II. That said appellant the Great Northern Railway Company is hereby ordered and required to install a scale for the weighing of live stock in its stock yards at the village of Bertha in said Todd county, which scale shall at least be of six (6) tons capacity, and further that said scale be installed within forty-five (45) days from the date of service of this order upon said appellant.

Dated November 28th, 1912.

By the Court,

C. A. NYE,
District Judge.

NOTE: The first question to be considered here is, whether these stock scales are a necessary means and facility for receiving and shipping stock over appellant's line, or in other words are such scales at the shipping point in question an essential to "efficient transportation facilities" within the meaning of Sec. 1988, R. L. 1905. Having in mind the facts as shown by the undisputed evidence it seems to me the question should be answered in the affirmative. The evidence shows that it is desirable and the universal — where it is possible to do so, for shippers to weigh out their
53 shipments at the time of loading the stock on cars; further the business of raising stock for shipment in the locality in question, is an important and growing industry it is fair to presume has in the past and will in the future result profitably not only

to the shipper, but to the Railway Company. Not only does the importance of the business seem to warrant the installation of these scales but under Sec. 8, Chapt. 23 G. L. 1907, the common carrier is required to furnish to the shipper at the time of shipment, a bill of lading showing among other things the weight of such shipment; that it would seem, renders the scales not only a convenience, but an actual necessity in order that the law may be complied with. It is also significant that in some fifty-four (54) instances in the state appellant has regarded the installation of scales as necessary or at least desirable and that at many of such stations less stock was handled than at the station of Bertha. It is doubtless true as suggested by counsel for appellant that the company should not be bound by the fact that it has voluntarily installed scales at these other places, yet the fact that it has done so may fairly be regarded as tending to establish the fact that such equipment is regarded as desirable and even necessary by those who are in the best position to know the public needs.

54

(Title.)

Notice of Appeal.

GENTLEMEN: You will please take notice that the above named defendant-appellant, Great Northern Railway Company, hereby appeals to the Supreme Court of the State of Minnesota, from that certain order of said District Court which was filed on the 2nd day of October, 1912, whereby said defendant-appellant was required to install a scale for the weighing of live stock at the village of Bertha, Minnesota, of at least six tons capacity within forty-five days from the date of service of said order upon defendant-appellant, and that said appeal is taken by defendant-appellant from the whole of said order.

Dated at St. Cloud, Minn., this 18th day of October, 1912.

J. D. SULLIVAN,

*Attorney for Defendant-Appellant,
Great Northern Railway Co.*

To Hon. Lyndon A. Smith, Attorney General State of Minnesota, and to Peter O. Scow, Esq., Clerk of the District Court of Todd County, Minnesota.

Due service admitted by Attorney General and by Clerk of District Court of Todd County.

55

(Title.)

Stipulation.

It is hereby stipulated and agreed by and between plaintiff-respondent and defendant-appellant herein that the giving of a bond upon appeal herein by defendant-appellant upon its appeal from

the order of the District Court of Todd county in the above entitled action be and the same is hereby waived.

Dated this 18th day of October, 1912.

J. D. SULLIVAN,
Attorney for Defendant-Appellant.
LYNDON A. SMITH,
Attorney General State of Minnesota.

56 To the Honorable Supreme Court:

I, Peter O. Scow, clerk of the district court for Todd County, Minnesota, do hereby certify and return that I have compared the foregoing papers writings with the original, Stipulation, Order, Respondent's Exhibit "A," Respondent's Exhibit "B," and Exhibit "A" Testimony of Witnesses, Findings of Fact and Conclusions of Law, Notice of Appeal and Stipulation, in the action therein entitled, as the same appear from the record and file in my office and find the same to be true and correct copies thereof, and the whole thereof.

In testimony whereof I have hereunto set my hand and seal of said Court at Long Prairie this 24th day of January, 1913.

[Seal District Court, Todd Co., Minn.]

PETER O. SCOW,
Clerk of District Court Todd County, Minn.

57 18040. State of Minnesota, Supreme Court. State ex rel. Railroad & Warehouse Commission, Respondent, vs. Great Northern Railway Company, Appellant. Opinion and Syllabus. Filed June 6, 1913. I A. Caswell, Clerk. April Term, A. D. 1913. Taylor, C. Brown, C. J., and Bunn, J., dissenting.

58 State of Minnesota, Supreme Court, April Term, A. D. 1913.

No. 20.

18040.

STATE EX REL. RAILROAD & WAREHOUSE COMMISSION, Respondent,
v.
GREAT NORTHERN RAILWAY Co., Appellant.

Syllabus.

It sufficiently appears from the evidence and from the fact that the appellant has voluntarily installed stock scales at 54 of its stations in Minnesota, that such scales are a convenience pertaining to the transportation of stock, and that its refusal to furnish them at the station Bertha was such a discrimination against that place that the Railroad and Warehouse Commission had authority to require them to be supplied at that station.

Order affirmed.

59 State of Minnesota, Supreme Court, April Term, A. D. 1913.

No. 20.

18040.

STATE EX REL. RAILROAD & WAREHOUSE COMMISSION, Respondent,
v.
GREAT NORTHERN RAILWAY Co., Appellant.

Opinion.

The Great Northern Railway Company, for the convenience of the public, has placed scales for weighing stock at its stockyards at the stations of Hewitt and Eagle Bend in Todd county, but has refused to place them at the station of Bertha, located between Hewitt & Eagle Bend and distant therefrom $4\frac{1}{2}$ and 7 miles respectively. On complaint made to the Railroad and Warehouse Commission, the commission ordered the company to place such scales at Bertha on the ground that its refusal so to do was an unlawful discrimination against that place. The order of the commission was affirmed on appeal to the district court and a further appeal brings the matter before this court.

Railways are forbidden to give, "any unequal or unreasonable preference or advantage to any particular * * * locality." The Railroad and Warehouse Commission is clothed with power to supervise railways, and to take such actions at all times as may be necessary to secure, "efficient transportation facilities," and prevent unjust discrimination.

60 If the stock scales in question properly form a part of the equipment reasonably necessary or convenient in transacting the business of shipping or transporting stock, the refusal to install them at Bertha, after installing them at points competing with that place, was a discrimination against Bertha, and the order appealed from should be affirmed. On the other hand, if, as strenuously contended by the appellant, such scales do not facilitate the business of transportation and are not in any way connected therewith, the order appealed from should be reversed.

At the trial the appellant offered no evidence but rested upon the evidence presented by the respondent and the facts are undisputed. They are in substance as follows: That in the year, 1910, stock was shipped in car load lots from 259 of appellant's stations in the State of Minnesota; that the number of car loads so shipped from the different stations varied from one at each of thirty-two stations to 414 at the station of Jasper; that appellant has installed stock scales, each of six ton capacity, at 54 of these stations; that these scales are located adjacent to the stockyards, but are not adjacent to nor connected with the railway tracks or buildings; that they are convenient for and are used by dealers and stock raisers in buying and selling, but no obligation to ship over the railway is imposed by such use; that stock raisers

who would otherwise market their stock at Bertha sometimes take it to Hewitt or Eagle Bend, a longer distance, in order to have
61 the use of the scales installed at those places; that such scales tend to draw the stock business to and concentrate it at the places where they are located; that where these scales are available shippers are accustomed to weigh their stock, for their own convenience and information, immediately before loading for shipment, but these weights are not used as a basis for freight charges nor in any transactions between the shipper and the railway company; nor in sales made at the terminal stockyards; that, after stock is loaded, the car load is weighed at some suitable point upon track scales which are under the supervision of the state, and the freight charges and all the transactions between the shipper and the company are based exclusively upon this weight; and that these stock scales are not used in any manner in the business transacted between the railway company and its patrons.

The witnesses testifying for respondent insisted that stock scales were a convenience, if not a necessity, in dealing in stock, and that a town having such scales possessed an advantage, as a stock market, over a town that did not, but frankly admitted that these scales had no direct part in the business of transportation, nor in the business of selling at the terminal yards.

As scales are a convenience and, probably, a necessity in dealing in stock, and tend to cause stock to be collected for shipment at the places where they are available, to the disadvantage of those places where they are not available, and are undoubtedly furnished
62 for the purpose and with the view of securing the transportation of stock from points at which they are located, it is the opinion of a majority of the members of the court that the evidence submitted, together with the fact that the company considered such scales of sufficient importance to its business to furnish them voluntarily at 54 of its stockyards in this state, is sufficient to support the finding that such scales pertain to the transportation facilities which the commission may require of a railroad and that the refusal to supply such scales to the station in question was a discrimination against it.

The purpose of the law regarding railways is to secure ample and efficient transportation facilities for all the people on equal and reasonable terms. To this end power is conferred upon the Railroad and Warehouse Commission to supervise railways and to see that the requisite facilities are afforded to all upon equal terms and at reasonable rates, and that proper instrumentalities are provided for the convenient use of such facilities.

It may properly intervene to prevent discrimination prohibited by law, and to require a railway, if it provide instrumentalities convenient in the business of transportation, at one place, to provide substantially equal facilities at another.

The writer deems it proper to say that he is unable to draw the same conclusion from the facts in this case that the majority of the

court draw therefrom, and that he entertains the view expressed in the dissent of the Chief Justice.

Order affirmed.

TAYLOR, C.

63 It may be conceded that it is within the power of the Railroad and Warehouse Commission to make such order or orders as the Commission may deem necessary to prevent an unjust and unreasonable discrimination by a railroad company in favor of or against a particular locality served by its line of road. But beyond question the exercise of such authority should be confined to the regulation of transportation facilities, and to prevent the granting of rights and privileges in that respect to a favored locality. The facts stated in the opinion put it beyond dispute that the stock scales which defendant is here required to install at Bertha have no reference whatever to the transportation of live stock; they serve as a convenience to the dealer in the purchase of cattle, but the weights ascertained in those transactions do not, in any case, serve as a basis for transportation charges, nor do they in any way enter into the contract of shipment. Such scales are not required by law, and whatever may be the right of the Railroad and Warehouse Commission, by way of preventing the alleged discrimination, to order their removal, unless installed at all stations, it seems clear, on the facts stated in the opinion, that the Commission was without authority to order the installation of the scales in question. If proper in the particular case stock scales may, for the same reasons, be required at every station in the state, and if the decision be followed to its logical result the Commission may order that all buildings and conveniences be identical at all stations without regard to the question whether they are essential to or facilitate in the operation of the road or in the transportation of persons or property. That the law does not vest such power in the Commission seems clear. I therefore dissent. Justice Bunn concurs in this view.

64

BROWN, C. J.

65 State of Minnesota Supreme Court, General April Term, A. D. 1913.

Friday morning, 9:30 o'clock, June 6, A. D. 1913 Court convened pursuant to adjournment.

Reg. No. 18040. Cal. No. 20.

STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE COMMISSION,
Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

For the reasons stated in the opinion of Commissioner Taylor, which is adopted as the opinion of the Court, the Order appealed from is affirmed.

Attest:

I. A. CASWELL, Clerk

The foregoing is a full and true copy of the order of affirmance in the above entitled cause.

Attest:

[Seal of the Supreme Court of the State of Minnesota.]

I. A. CASWELL, *Clerk*,
By — — —, *Deputy*.

66 No. 18040. State of Minnesota, Supreme Court. State
ex rel. R. R. Commission, Respondent, vs. G. N. Ry. Co.,
Appellant. Copy of order for judgment. Filed July 3, 1913.
I. A. Caswell, *Clerk*.

67 State of Minnesota Supreme Court, April Term, A. D. 1913.

No. 20.

STATE ex rel. RAILROAD & WAREHOUSE COMMISSION OF THE STATE
OF MINNESOTA, Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

Appeal from District Court, Seventh Judicial District, County of
Todd.

This cause having been duly argued and submitted at the General
April Term of this court A. D. 1913 upon the return to the appeal
herein.

Now, after full and mature deliberation had thereon, it is here and
hereby ordered that the order of the Court below, herein appealed
from, be and the same hereby is, in all things affirmed, and that
judgment be entered accordingly.

Entered July 3, A. D. 1913.

By the court.

Attest:

I. A. CASWELL, *Clerk*.

I hereby certify that the foregoing is a full and true copy of the
original Order for judgment entered in the above entitled cause.

Attest:

[Seal of the Supreme Court of the State of Minnesota.]

I. A. CASWELL, *Clerk*.

68 18040. State of Minnesota, Supreme Court. Copy of
Minutes of Argument. Filed July 3, 1913. I. A. Caswell,
Clerk.

69 State of Minnesota Supreme Court, General April Term,
A. D. 1913.

Friday morning, 9:30 o'clock, May 9 A. D. 1913, Court convened pursuant to adjournment.

Reg. No. 18040. Cal. No. 20.

STATE ex Rel. R. R. COMMISSION, Respondent,
vs.
GREAT NORTHERN RY. Co., Appellant.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.

A true record.

Attest:

I. A. CASWELL, *Clerk*,

The foregoing is a full and true copy of the Minutes of Argument in the above entitled cause.

Attest:

[Seal of the Supreme Court of the State of Minnesota.]

I. A. CASWELL, *Clerk*.

By ———, *Deputy*.

70 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and the seal of said Supreme Court at the Capitol in the City of St. Paul, July 3, A. D. 1913.

[Seal of the Supreme Court of the State of Minnesota.]

I. A. CASWELL, *Clerk*.

State of Minnesota, Supreme Court. Transcript of Judgment.
Filed July 3, A. D. 1913. I. A. Caswell, Clerk.

71 State of Minnesota Supreme Court, April Term, A. D. 1913.

- No. 20.

STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE COM-
MISSION OF THE STATE OF MINNESOTA, Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

Pursuant to an order of Court duly made and entered in this cause July 3 A. D. 1913,

It is here and hereby determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court of the Seventh Judicial District, sitting within and for the County of Todd be and the same hereby is in all things affirmed, And it is further determined and adjudged that the Respondent above named, do have and recover of said Appellant herein the sum and amount of Forty-four and 75/100 Dollars, (\$44.75) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed July 3, A. D. 1913.

By the court.

Attest:

I. A. CASWELL, *Clerk.*

Statement for Judgment.

| | |
|-------------------------------------|---------|
| Cost allowed by statute..... | \$25.00 |
| Printer's fees..... | 8.00 |
| Clerk's fees, Supreme Court..... | 11.50 |
| Affidavits and Acknowledgments..... | .25 |
| Return | |
| Postage and express..... | |
| Filing Mandate..... | |
| | <hr/> |
| | \$44.75 |

72 18040. State of Minnesota, Supreme Court. State ex Rel.
R. R. & Ware H. Com., Respondent, vs. Great Northern
Ry. Co., Appellant. Judgment Roll. Filed July 3, 1913. I. A.
Caswell, Clerk.

73 State of Minnesota Supreme Court, April Term, 1913.

18040.

STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE COM-
MISSION, Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

Assignments of Error.

M. L. Countryman, St. Paul, Minnesota, and
J. D. Sullivan, St. Cloud, Minnesota, Attorneys for Appellant.
Hon. Lyndon A. Smith, Attorney General, Attorney for Re-
spondent.

Filed Feb. 13, 1913. I. A. Caswell, Clerk.

74

Assignments of Error.

1. The court erred in its sixth finding of fact herein, found on page 50 of the paper book, in finding that such stock scales as are specified in its decision herein are a facility used in the buying, marketing and shipping of live stock and that without such scales such business is rendered more difficult and inconvenient and that as between the shipper and the railway company such scales are necessary in order to ascertain the lawful freight charges to be paid by the shipper and to enable appellant, the Railway Company, to properly furnish the shipper with the bill of lading required by law.

2. The court erred in its conclusions of law herein in ordering and requiring appellant to instal a scale of six tons capacity for the weighing of livestock at Bertha, as found on page 51 of the paper book, folio 152.

3. The court erred in its failure to wholly reverse the order of the Railroad & Warehouse Commission as prayed by appellant.

4. The court erred in affirming the order of the Railroad & Warehouse Commission, upon the ground that said order is in violation of Article 14 of the Constitution of the United States, being an attempt to deprive this appellant of its property without due process of law.

J. D. SULLIVAN,
St. Cloud, Minnesota;
M. L. COUNTRYMAN,
St. Paul, Minnesota,
Attorneys for Appellant.

75 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and

proceedings in the case of Great Northern Railway Company, Plaintiff in Error, vs. State of Minnesota ex rel. Railroad & Warehouse commission of Minnesota, Defendant in Error, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in St. Paul, Minnesota, this 17th day of July, A. D. 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

76

In the Supreme Court of the United States.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.

STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE COMMISSION
OF THE STATE OF MINNESOTA, Defendant in Error.

Assignments of Error.

Comes now the Great Northern Railway Company, the plaintiff in error in the above entitled cause and avers and shows that in the record and proceedings in said cause, the Supreme Court of the State of Minnesota erred to the grievous injury and wrong of the plaintiff in error herein, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to-wit:

1. That the said Supreme Court erred in holding that the plaintiff in error should establish and instal stock scales at the village of Bertha when it found that such scales had no reference whatever to the transportation of livestock or the duty of the carrier in connection with such transportation.

2. That the said Supreme Court erred in holding that the plaintiff in error should establish stock scales at Bertha for the sole reason that similar scales had been established at points of shipment competitive with said village of Bertha.

3. That the said Supreme Court erred in holding that the order of the trial court affirming the order of the Railroad & Warehouse Commission therein directing that the plaintiff in error instal stock scales at the village of Bertha for the weighing of livestock was not a confiscation of the property of the plaintiff in error and a

77 deprivation of its property without due process of law contrary to Section 1 of the Fourteenth Amendment of the Federal Constitution.

4. That the said Supreme Court erred in refusing to hold that the order appealed from affirming the order of the Railroad & Warehouse Commission if enforced would deprive plaintiff in error of its property without compensation and without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution.

5. That the said Supreme Court erred in not reversing the order of the trial court therein with instructions to such court to reverse the order of the Railroad & Warehouse Commission therein, and denying to the plaintiff in error its rights under Section 1 of the Fourteenth Amendment of the Federal Constitution.

Wherefore, for these and other manifest errors appearing plaintiff in error prays that the judgment of the said Supreme Court of the state of Minnesota be reversed and set aside and held for naught, and that judgment be rendered for the plaintiff in error granting it its rights under the constitution and statutes of the United States, and plaintiff in error also prays for judgment for its costs.

THOS. R. BENTON,

*Attorney for Great Northern Railway
Company, Plaintiff in Error.*

78 [Endorsed:] 18040. In the Supreme Court of the United States. Great Northern Railway Company, Plaintiff in Error, vs. State of Minnesota ex Rel. Railroad & Warehouse Commission of the State of Minnesota, Defendant in Error. Assignments of Error. Filed this 11th day of July, 1913. I. A. Caswell, Clerk.

79 In the Supreme Court of the United States.

STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE COMMISSION
OF THE STATE OF MINNESOTA, Respondent,
vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

To the Honorable Justices of the Supreme Court of the State of Minnesota:

Your petitioner, the above named Great Northern Railway Company, respectfully shows that on the 3d day of July, 1913, the Supreme Court of the State of Minnesota, rendered a final judgment against your petitioner in a certain case wherein your petitioner was defendant and State of Minnesota ex rel. Railroad & Warehouse Commission of the State of Minnesota was plaintiff, as will appear by reference to the record and proceedings in said case, and that the said court is the highest court of law or equity of said state in which a decision in said suit could be had; that in the said suit it was contended in this court that the order of the Railroad & Warehouse Commission and the order of the trial court affirming the same would confiscate and deprive the defendant of its property without due process of law contrary to Section 1 of the Fourteenth Amendment of the Federal Constitution and there was in consequence by such contention of this defendant drawn in question therein and thereto the application of said Section 1 of the Fourteenth Amendment of the Federal Constitution. That the decision of this court is against the right claimed thereunder by the said Great Northern Railway Company, appellant, and as it believes is

contrary thereto, all of which will more fully appear in detail from the assignments of error filed herein.

80 Wherefore, the said Great Northern Railway Company, prays that a writ of error may issue to the Supreme Court of the State of Minnesota for the correcting of the errors complained of and that a duly authenticated transcript of the record proceedings and papers therein may be sent to the United States Supreme Court.

GREAT NORTHERN RAILWAY
COMPANY,

By THOS. R. BENTON,

Attorney for Appellant.

81 [Endorsed:] 18040. In the Supreme Court of the United States. State of Minnesota, ex rel. Railroad & Warehouse Commission of the State of Minnesota, Respondent, vs. Great Northern Railway Company, Appellant. Petition for Writ of Error. Filed this 11th day of July, 1913. I. A. Caswell, Clerk.

82 Know all men by these presents that we Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, as principal, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto the State of Minnesota in the sum of One Thousand Dollars (\$1,000.00) to be paid to the said obligees, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this ninth day of July, 1913.

Whereas, lately in the Supreme Court of the State of Minnesota, in a suit pending in said Court between State of Minnesota, ex rel. Railroad & Warehouse Commission of the State of Minnesota, Plaintiff, and Great Northern Railway Company, Defendant, Judgment was entered against said defendant, and said defendant seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in said suit.

Now, therefore, the condition of this obligation is such that if the above named defendant, Great Northern Railway Company, shall prosecute its said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

[Corporate Seal Great Northern Railway Company.]

GREAT NORTHERN RAILWAY
COMPANY,

By R. A. JACKSON, *Vice President.*

Attest:

F. S. PATZOLD, *Assistant Secretary.*

[Corporate Seal National Surety Company.]

NATIONAL SURETY COMPANY,
By W. S. McCURDY,

Its Attorney in Fact.

83 STATE OF MINNESOTA,
County of Ramsey:

On this 9th day of July, 1913, before me appeared R. A. Jackson, to me known, who, being by me duly sworn, did say that he is the Vice President of the Great Northern Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was executed in behalf of said corporation by authority of its Board of Directors and that said R. A. Jackson acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and official seal the day and year first above written.

[NOTARIAL SEAL.]

GUSTAVE E. WALBERT,
Notary Public, Ramsey County, Minnesota.

My Commission expires June 7, 1919.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 10th day of July, A. D. 1913, before me appeared W. S. McCurdy, to me personally known, who being by me duly sworn did say that he is the attorney-in-fact of the National Surety Company, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said W. S. McCurdy acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and official seal the day and year first above written.

[NOTARIAL SEAL.]

EVA CEDARLEOF,
Notary Public, Ramsey County, Minnesota.

My commission expires June 2nd, 1920.

The within bond is this 11th day of July, 1913, approved.

CALVIN L. BROWN,
Chief Justice.

84 [Endorsed:] 18040. Great Northern Ry. Co., Pff. in Error, vs. State ex Rel. R. R. & W. H. Co., Deft. in Error. Bond. Filed Jul- 11, 1913. I. A. Caswell, Clerk.

85 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Minnesota, before you, or some of you, being the highest court of law or equity of the said state, in which a decision could be had in the said suit between the State of Minnesota, ex rel. Rail-

road & Warehouse Commission of the state of Minnesota, plaintiff and respondent, and the Great Northern Railway Company, defendant and appellant, wherein was drawn in question the construction and application of a clause of the Constitution of the United States, and the decision was against the right and privilege specially set up and claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said Great Northern Railway Company as by its complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice
86 of the United States, this 11th day of July in the year of our Lord one thousand nine hundred and thirteen.

Done in the City of St. Paul, County of Ramsey, State of Minnesota, with the seal of the District Court of the United States for the district of Minnesota attached.

[U. S. Dist. Court Seal, Dist. of Minnesota, Third Division.]

CHARLES L. SPENCER,
*Clerk of the District Court of the United
States for the District of Minnesota.*

Allowed by:

CALVIN L. BROWN,
*Chief Justice of the Supreme Court of
the State of Minnesota.*

87 [Endorsed:] 18040. In the Supreme Court of the United States. Great Northern Railway Company, Plaintiff in Error, vs. State of Minnesota, ex rel., Railroad & Warehouse Commission of the State of Minnesota, Defendant in Error. Writ of Error. Filed 11 day of July, 1913. I. A. Caswell, Clerk. Filed Jul. 11, 1913. I. A. Caswell, Clerk.

88 In the Supreme Court of the State of Minnesota.

STATE OF MINNESOTA ex Rel. RAILROAD & WAREHOUSE COMMISSION OF THE STATE OF MINNESOTA, Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, Appellant.

Comes now the Great Northern Railway Company, the appellant above named, on this 11th day of July, 1913, and files and presents

to this court its petition praying for the allowance of a writ of error intending to be urged by it; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper; and upon consideration of the said petition this court desiring to give petitioner an opportunity to test in the Supreme Court of the United States, the questions herein presented, it is ordered by this court that a writ of error be allowed, as prayed, provided however, that the said Great Northern Railway Company, appellant, give bond according to law in the sum of one thousand (\$1,000.), which said bond shall operate as a supersedeas bond.

In testimony whereof, witness my hand this 11th day of July, 1913.

CALVIN L. BROWN,
*Chief Justice of the Supreme Court
of the State of Minnesota.*

89 [Endorsed:] 18040. In the Supreme Court of the State of Minnesota. State of Minnesota, ex rel. Railroad & Warehouse Commission of the State of Minnesota, Respondent, vs. Great Northern Railway Company, Appellant. Order Allowing Writ of Error. Filed July 11, 1913 I. A. Caswell, Clerk Filed Jul. 11, 1913. I. A. Caswell, Clerk.

90 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of the said Court, do hereby certify that there was lodged with me as such Clerk on July 11, A. D. 1913, in the matter of Great Northern Railway Company, Plaintiff in Error, vs. State of Minnesota ex rel. Railroad & Warehouse Commission of Minnesota, Defendant in Error.

1. The original bond, of which a copy is herein set forth;

2. Two copies of the Writ of Error, as herein set forth—one for the Defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in St. Paul, Minnesota, this 17th day of July, A. D. 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

91 UNITED STATES OF AMERICA, ss:

The President of the United States to State of Minnesota ex rel. Railroad & Warehouse Commission of the State of Minnesota,
Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington,

D. C., within thirty days from the date hereof pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein the Great Northern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 11th day of July, 1913.

CALVIN L. BROWN,
*Chief Justice of the Supreme Court of
the State of Minnesota.*

ST. PAUL, MINN., July 11th, 1913.

We, the undersigned, attorneys of record for State of Minnesota, ex rel. Railroad & Warehouse Commission of the State of Minnesota, defendant in the above entitled case, hereby acknowledge due service of the above citation.

LYNDON A. SMITH,
Attorney General of the State of Minnesota.

92 [Endorsed:] 18040. In the Supreme Court of the United States Great Northern Railway Company, Plaintiff in Error, vs. State of Minnesota, ex rel. Railroad & Warehouse Commission of the State of Minnesota, Defendant in Error. Citation. Filed — day of July, 1913. — — —, Clerk. Filed Jul. 11, 1913. I. A. Caswell, Clerk.

93 STATE OF MINNESOTA,
Supreme Court, ss:

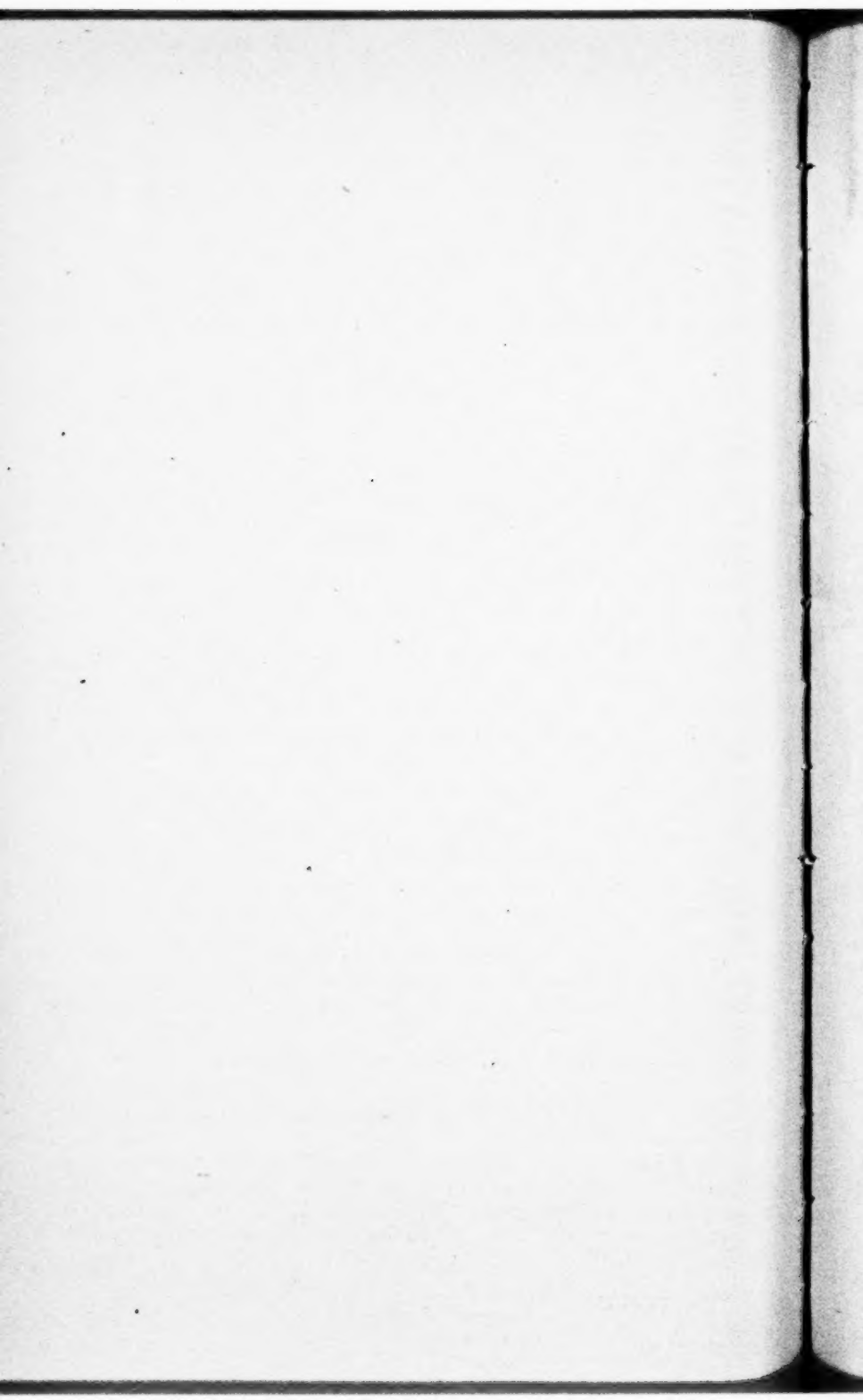
In obedience to the commands of the within Writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the Seal of said Supreme Court of Minnesota, in the City of St. Paul, this 17th day of July, A. D. 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

Endorsed on cover: File No. 23,806. Minnesota Supreme Court. Term No. 655. Great Northern Railway Company, plaintiff in error, vs. The State of Minnesota ex Rel. Railroad & Warehouse Commission of the State of Minnesota. Filed August 1st, 1913. File No. 23,806.



20
FILED
MAR 15 1915

JAMES D. MAHER
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 225.

GREAT NORTHERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF MINNESOTA ex rel. RAILROAD AND WAREHOUSE
COMMISSION OF THE STATE OF MINNESOTA,

In Error to the Supreme Court of the State of Minnesota.

BRIEF OF PLAINTIFF IN ERROR.

E. C. LINDLEY,
SANFORD H. E. FREUND,
Attorneys for Great Northern
Railway Company, Plaintiff
in Error.

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THE STATE OF MINNESOTA ex rel. RAILROAD AND WAREHOUSE
COMMISSION OF THE STATE OF MINNESOTA,

In Error to the Supreme Court of the State of Minnesota.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

The Railroad and Warehouse Commission of the State of Minnesota ordered the appellant, who will hereafter be referred to in this brief as the "Railway Company", to erect a six-ton stock scale at its stockyards at the station of Bertha, Todd County, Minnesota. From the order of the District Court affirming the order of the Commission the Railway Company

appealed to the Supreme Court of Minnesota, which affirmed the order. (122 Minn. 55; fols. 59 and 65.) The case is in this court on writ of error to the Supreme Court of Minnesota.

Bertha is a village of a few hundred inhabitants, located on the Park Rapids Branch of the Railway Company, in Todd County, Minnesota, four and a half miles south of the station of Hewitt and seven miles north of the station of Eagle Bend.

The order of the Commission was entered, as appears, therein, upon an informal complaint, without affording the Railway Company any hearing, other than by correspondence. No point, however, is made that the Commission had no jurisdiction to enter an order in the premises, for want of a formal complaint or because a hearing was not then accorded the Railway Company, on the one issue, namely, discrimination, tendered and tried in the District Court.

For the years 1906 to 1911, inclusive, the Commission found the following number of cars of live stock to have been shipped from the stations of Bertha, Eagle Bend, and Hewitt, respectively:

| | <i>Bertha.</i> | <i>Eagle Bend.</i> | <i>Hewitt.</i> |
|-----------|----------------|--------------------|----------------|
| 1906..... | 22 | | |
| 1907..... | 17 | | |
| 1908..... | 9 | | |
| 1909..... | 18 | 48 | 27 |
| 1910..... | 25 | 51 | 38 |
| 1911..... | 27 | 51 | 47 |

and attributed the fact that there were a greater number of cars shipped from both Hewitt and Eagle Bend, to the existence of stock scales at those points. (Fol. 40.)

With respect to the action of the Railway Company in maintaining track scales at Hewitt and Eagle Bend, for the convenience of stockmen in connection with the purchase of stock, and not maintaining such scales at Bertha for the like convenience of stockmen, the Commission says (fol. 40) :

"It seems to the Commission that this is a plain case of discrimination against Bertha, and that it ought to be furnished with the same facilities for purchasing stock as the stations on either side of it.

"The Great Northern Railway Company has established the practice of putting in scales at different points on its road, and allowing shippers to use them to weigh stock for the purpose of purchasing it, and so long as it does this from one station, and that station is so situated that it is in common territory with another station without these facilities, it must necessarily draw the greater share of business to the territory having scales."

It thus clearly appears that the order of the Commission is predicated solely upon the proposition that the Railway Company is guilty of discrimination. The order of the Commission is not predicated upon the proposition that, in the absence of discrimination, a railway company is bound to afford, solely for the convenience of stockmen in connection with the purchase of stock, scales for the weighing thereof. Neither is the order of the Commission predicated upon the proposition that when reasonable public necessity and convenience, and the character of the traffic tendered for transportation, require that the traffic be weighed, a railway company must afford adequate weighing facilities.

Under applicable statutory provisions the Railway Company appealed to the District Court where the matter was tried *de novo*. In the inception of the trial Mr. Mills, a member of the Minnesota Railroad and Warehouse Commission, stated the issue before the court in the following manner (fol. 10) :

"Mr. Mills: We claim, if the Court please, that the fact that they (the Railway Company) put their scales on each side (Eagle Bend and Hewitt) and this being common territory they draw their stock from, that it is a matter of discrimination.

Mr. Sullivan (representing the Railway Company): That is the very reason I interposed this objection at this time, on account of the recital in the order of the Railway Commission that it amounted to discrimination. Our position is, unless there is some legal obligation resting upon us to furnish these stock scales, the fact that we furnished them at some other place unless the law compels it, cannot lay the presumption that we ought to furnish them at Bertha.

Mr. Mills: That is our position.

* * * * *

Mr. Sullivan: That is the main issue.

Mr. Mills: *Yes, that is the main feature in the case.*"

(Italics ours.)

In support of its order the Commission adduced the following evidence:

The witness Raymond testified that there were platform scales in the town about four blocks from the stock yard (folio 14); at which anything could be weighed by paying the owner's charges, which were reasonable (fol. 25); that stock scales were merely ordinary platform scales like any public scales except that they are equipped with a fence and gates so that stock can be driven in and kept in while being weighed (fols. 11, 17); that the stock scales were not connected with any tracks of the Railway Company, but were outside the yard (fol. 18).

"Q. Now, when you buy from farmers stock that you and your associates want to ship out, you want this scale there so that you can weigh that stock as a basis for settlement with farmers?

A. Yes, sir.

* * * * *

"Q. So that the sole purpose of a stock scale there is merely as a matter of *convenience between buyer and seller* of the stock to *find out* what the weight is; ain't that true?

A. Yes, sir.

"Q. That is it; and this stock scale at Hewitt and the similar one at Eagle Bend is not *connected with the railroad business*, except as a matter of convenience and accommodation there, close to the stock yards?

A. That is it. (fol. 19-20.)

.

"Q. So that the weight you get there at the stock scales is a matter between you and the farmer you buy from?

A. Yes, sir.

"Q. And has nothing to do with the weights that you get afterwards from the Railroad Company, for instance at Sauk Center, or wherever there is a track scales?

A. No." (fol. 21.)

The witness Osborn testified:

Weighing on the stock scales "*is done principally for our own convenience.*" That so far as weights for basing freight rates were concerned they took the track scale weight from South St. Paul. (fol. 30-32.)

Live stock is all weighed upon track scales at the terminal stock yards, under the supervision of the state, as is evidenced by the following (fols. 32-33):

"Mr. Mills: Now, there is no State scales at South St. Paul, but all the track scales of the railroad are under the supervision of the State.

Mr. Sullivan: That is the Commission.

Mr. Mills: Yes, the weighing upon them I think is done by the Western Weighing Association.

Mr. Sullivan: Yes, that may be corrected, that these so-called track scales, they are not State scales but they are all subject to inspection by the Railroad and Warehouse Commission.

Mr. Mills: Yes, they are; and the weighing is done by the Western Weighing Association.

The Witness: I supposed it was done by the State.

Mr. Mills: No, grain is.

Mr. Sullivan: I think Judge Mills is undoubtedly correct. When I spoke of the State, why we meant they were subject to State inspection.

Mr. Mills: Yes, that is it."

The witness Johnston testified:

"Well, it would be a great advantage for a farmer like myself, in a stockyards; for instance, I want to take in a bunch of hogs or a bunch of cattle or a bunch of sheep; the way it is at present I have got to load them in order to weigh them, because our scales is on the public street, and there is no railing around them, nor gates nor chute to drive stock in onto them, and if there was a yard we could drive them down in and arrange to weigh them on a yard scales at the stockyards, which we could do with less trouble and more convenience." (fol. 34.)

* * * * *

"Q. Now, when you speak about convenience of weighing on a scales where there is a fence and gates, you mean convenience as between the farmer who sells that stock and the stock buyer who buys it?

A. Well, it is the convenience of the parties handling stock." (fol. 37.)

It appears that in the year 1910 live stock was shipped in carload lots from 259 of the stations of the Railway Company in the State of Minnesota; that the number of cars shipped ranged from 1, at 32 of said stations, to 414, at the station of Jasper; that at 54 of the stations in the state, the Railway Company had installed stock scales which stockmen were permitted to use for the purpose of weighing cattle in connection with the purchase thereof; and that at none of said points were the scales used to furnish shippers the weight of cattle received by the Railway Company for the purpose of assessing freight charges upon such weights.

The trial court upheld the order of the Railroad and Warehouse Commission. The Railway Company appealed to the Su-

preme Court, assigning as error certain findings of fact made by the trial court and certain conclusions of law with respect to the statutory authority of the Railroad and Warehouse Commission; and alleging that the order of the Commission, and the judgment of the trial court affirming the same, deprive the Railway Company of its property without due process of law and hence contravene the Fourteenth Amendment to the Constitution of the United States. In affirming the judgment of the lower court the Supreme Court says: (Fol. 59.)

"Railways are forbidden to give 'any unequal or unreasonable preference or advantage to any particular * * * locality.' The Railroad and Warehouse Commission is clothed with power to supervise railways, and to take such actions at all times as may be necessary to secure 'efficient transportation facilities' and prevent unjust discrimination.

"If the stock scales in question properly form a part of the equipment reasonably necessary or convenient in transacting the business of shipping or transporting stock, *the refusal to install them at Bertha, after installing them at points competing with that place, was a discrimination against Bertha, and the order appealed from should be affirmed.* On the other hand, if, as strenuously contended by the appellant, such scales do not facilitate the business of transportation and are not in any way connected therewith, the order appealed from should be reversed.

"At the trial the appellant offered no evidence, but rested upon the evidence presented by the respondent and the facts are undisputed. They are in substance as follows: That in the year 1910 stock was shipped in carload lots from 259 of appellant's stations in the State of Minnesota; that the number of car loads so shipped from the different stations varied from one at each of thirty-two stations to 414 at the station of Jasper; that appellant has installed stock scales, each of six-ton capacity, at 54 of these stations; that these scales are located adjacent to the stockyards, but are not adjacent to nor connected with the railway tracks or buildings; that they are convenient for and are used by dealers and stock raisers in buying and selling, but no obligation to ship over the railway is

imposed by such use; that stock raisers who would otherwise market their stock at Bertha sometimes take it to Hewitt or Eagle Bend, a longer distance, in order to have the use of the scales installed at those places; that such scales tend to draw the stock business to and concentrate it at the places where they are located; that where these scales are available *shippers are accustomed to weigh their stock, for their own convenience and information, immediately before loading for shipment, but these weights are not used as a basis for freight charges nor in any transactions between the shipper and the railway company; nor in sales made at the terminal stockyards; that, after stock is loaded, the car load is weighed at some suitable point upon track scales which are under the supervision of the state, and the freight charges and all the transactions between the shipper and the company are based exclusively upon this weight; and that these stock scales are not used in any manner in the business transacted between the railway company and its patrons.*

"The witnesses testifying for respondent insisted that track scales were a convenience, if not a necessity, in dealing in stock, and that a town having such scales possessed an advantage, as a stock market, over a town that did not, but frankly admitted that these scales had no direct part in the business of transportation, nor in the business of selling at the terminal yards. (Italics ours.)

* * * * *

"The purpose of the law regarding railways is to secure ample and efficient transportation facilities for all the people on equal and reasonable terms. To this end power is conferred upon the Railroad and Warehouse Commission to supervise railways and to see that the requisite facilities are afforded to all upon equal terms and at reasonable rates, and that proper instrumentalities are provided for the convenient use of such facilities.

"It may properly intervene to prevent discrimination prohibited by law, and to require a railway, if it provide instrumentalities convenient in the business of transportation, at one place, to provide substantially equal facilities at another.

"The writer deems it proper to say that he is unable to draw the same conclusion from the facts in this case that the majority of the court draw therefrom, and that he en-

tertain the view expressed in the dissent of the Chief Justice."

The following is the dissent of the Chief Justice (Vol. 63) :

"It may be conceded that it is within the power of the Railroad and Warehouse Commission to make such order or orders as the Commission may deem necessary to prevent an unjust and unreasonable discrimination by a railroad company in favor of or against a particular locality served by its line of road. But beyond question the exercise of such authority should be confined to the regulation of transportation facilities, and to prevent the granting of rights and privileges in that respect to a favored locality. The facts stated in the opinion put it beyond dispute that the stock scales which defendant is here required to install at Bertha have no reference whatever to the transportation of live stock; they serve as a convenience to the dealer in the purchase of cattle, but the weights ascertained in those transactions do not, in any case, serve as a basis for transportation charges, nor do they in any way enter into the contract of shipment. Such scales are not required by law, and whatever may be the right of the Railroad and Warehouse Commission, by way of preventing the alleged discrimination, to order their removal, unless installed at all stations, it seems clear, on the facts stated in the opinion, that the Commission was without authority to order the installation of the scales in question. If proper in the particular case stock scales may, for the same reasons, be required at every station in the state, and if the decision be followed to its logical result the Commission may order that all buildings and conveniences be identical at all stations without regard to the question whether they are essential to or facilitate in the operation of the road or in the transportation of persons or property. That the law does not vest such power in the Commission seems clear. I therefore dissent. Justice Bunn concurs in this view."

The following propositions are deducible from the record :

- (1) That the order in question was made by the Railroad and Warehouse Commission solely for the purpose of removing

what in the judgment of the Commission is a discrimination against Bertha and stockmen in that vicinity.

(2) That discrimination was the issue of fact tendered and tried in the District Court.

(3) That the Supreme Court of Minnesota upheld the order of the Commission on the ground that the Commission is clothed with sufficient statutory authority to prevent unjust discrimination, and that the facts in the case are sufficient to warrant the finding of the Commission and the lower court, that it is discrimination for the Railway Company to afford Hewitt and Eagle Bend, and stockmen in the vicinities thereof, the convenience of stock scales, and to fail to furnish a like convenience at Bertha.

(4) That adequate and sufficient track scales for the weighing of stock are maintained at South St. Paul (the live stock market of the state) and at various points along the lines of the Railway Company, for the purpose of weighing live stock in order to ascertain the freight charges (based upon weight) upon such traffic; that said scales are under the supervision of the Railroad and Warehouse Commission of the State of Minnesota and subject to its inspection.

(5) That the scales required by the order of the Commission are not necessary for the transaction of the business of the Railway Company, and would not be used in connection with the business between the shippers of live stock and the Railway Company; but, on the contrary, such scales, if installed pursuant to the order, would be used solely by stockmen and farmers in the transaction of their business with each other, in connection with the purchase and sale of stock.

ASSIGNMENTS OF ERROR.

The Railway Company makes the following assignments of error (fol. 76-77) :

1. That the said Supreme Court erred in holding that the plaintiff in error should establish and install stock scales at the village of Bertha when it found that such scales had no reference whatever to the transportation of live stock or the duty of the carrier in connection with such transportation.

2. That the said Supreme Court erred in holding that the plaintiff in error should establish stock scales at Bertha for the sole reason that similar scales had been established at points of shipment competitive with said village of Bertha.

3. That the said Supreme Court erred in holding that the order of the trial court affirming the order of the Railroad and Warehouse Commission therein directing that the plaintiff in error install stock scales at the village of Bertha for the weighing of live stock was not a confiscation of the property of the plaintiff in error and a deprivation of its property without due process of law contrary to Section 1 of the Fourteenth Amendment of the Federal Constitution.

4. That the said Supreme Court erred in refusing to hold that the order appealed from, affirming the order of the Railroad and Warehouse Commission, if enforced, would deprive plaintiff in error of its property without compensation and without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution.

5. That the said Supreme Court erred in not reversing the order of the trial court therein with instructions to such court to reverse the order of the Railroad and Warehouse Commission therein, and denying to the plaintiff in error its rights under Section 1 of the Fourteenth Amendment of the Federal Constitution.

ARGUMENT.

I.

THE ORDER OF THE COMMISSION REQUIRING THE RAILWAY COMPANY TO INSTALL THE SCALES IN QUESTION FOR THE CONVENIENCE OF STOCKMEN AND FARMERS IN CONNECTION WITH PRIVATE TRANSACTIONS DEPRIVES THE RAILWAY COMPANY OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

Passing for the moment the question of the authority of the State of Minnesota, either directly or through its Railroad and Warehouse Commission, to require of railway companies equal and non-discriminatory service to all, the state, in the absence of the necessity for the exercise of such authority, cannot, by virtue of its control over public carriers, require them to expend money for the installation of facilities not needed in connection with the public service afforded by them. That such an order is taking property without due process of law is directly determined in *Washington ex rel. Oregon Railroad & Navigation Company vs. Fairchild*, 224 U. S. 509, wherein the court says (page 523) :

"The commission's order requiring the Oregon Company to make track connection was not a mere administrative regulation, but it was a taking of property, since it compelled the defendant to expend money, and prevented it from using for other purposes the land on which the tracks were to be laid. Its validity could not be sustained merely because of the fact that the carrier had been given an opportunity to be heard, but was to be tested by considering whether, in view of all the facts, the taking was arbitrary and unreasonable, or was justified by the public necessities which the carrier could lawfully be compelled to meet. For the guaranty of the Constitution extends to the protection of the fundamental rights,—to the substance of the order as well as to the notice and hearing

which precede it. 'The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation.' (Citing cases.) So that, where the taking is under an administrative regulation, the defendant must not be denied the right to show that, as matter of law, the order was so arbitrary, unjust, or unreasonable as to amount to a deprivation of property in violation of the 14th Amendment."

The above language was used by the court in disposing of the question whether or not the Railway Company in that case had had an opportunity to be heard. The court found in the Fairchild case that the road had been accorded a hearing; but, as is stated in the language quoted above, it further found that the Railway Company was deprived of property by being required to install a connecting track, and that it could not be so deprived unless "the facts proved show the existence of such a *public necessity* as authorizes a taking of property." (Italics ours.)

The court says (page 528) :

"That being so, (the Railway Company having been heard) it leaves for consideration the contention that, as a matter of law, the order, on the facts proved, was so unreasonable as to amount to a taking of property without due process of law. This necessitates an examination of the evidence, not for the purpose of passing on conflicts in the testimony, or of deciding upon pure questions of fact, but, as said in *Kansas City Southern R. Co. vs. C. H. Albers Commission Co.*, 223 U. S. 591, from an inspection of the 'entire record including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter.' (Citing cases.) * * * Here the question presented is whether, as a matter of law, the facts proved show the

existence of such a public necessity as authorizes a taking of property."

The court, while conceding that a state may, proper circumstances existing, require connecting tracks, says (page 528-9) :

"But manifestly that does not mean that a commission may compel them to build branch lines, so as to connect roads lying at a distance from each other; nor does it mean that they may be required to make connections at every point where their tracks come close together in city, town and country, regardless of the amount of business to be done, or the number of persons who may utilize the connection if built. The question in each case must be determined in the light of all the facts, and with a just regard to the advantage to be derived by the public and the expense to be incurred by the carrier. * * * *If the order involves the use of property needed in the discharge of those duties which the carrier is bound to perform, then, upon proof of the necessity, the order will be granted, even though 'the furnishing of such necessary facilities may occasion an incidental pecuniary loss.'* But even then the matter of expense is 'an important criteria to be taken into view in determining the reasonableness of the order.' (Citing cases.) *Where, however, the proceeding is brought to compel a carrier to furnish a facility not included within its absolute duties, the question of expense is of more controlling importance.*" (Italics ours.)

The court then proceeded to show that no traffic would be served by the installation of connecting tracks at a number of points where the order of the Washington Commission required their installation, and observed (page 531-2) :

"Here there is no evidence of inadequate service, no proof of public complaint or of a public demand, and no testimony that any freight had been offered in the past for shipment between the points named, or that any such freight would be offered in the future; nor was there any evidence whatever as to the volume of freight that would use these tracks, or that the saving in freight and time to the shipper would justify the admitted expense to the

carrier, whether that expense be \$7,500, as found by the Commission, or \$21,000, as claimed by the carrier."

The court, in distinguishing the case of M. & St. L. R. Co. vs. Minnesota, 193 U. S. 53, which related to the necessity of a new station building, says (page 532) :

"But here there was no evidence whatever warranting a finding that there was any *public necessity* for the track connections."

The court, in conclusion, says:

"There is nothing by which to compare the advantage to the public with the expense to the defendant, and nothing to show that, within the meaning of the law, there is such *public necessity* as to justify an order taking property from the company. The judgment is therefore reversed. * * *"

We have quoted at length from the above decision to make clear the proposition that the order of the Commission, and the judgment of the Supreme Court of Minnesota affirming the same, take the property of the defendant, and hence, in the absence of a public necessity for the scales—which absence of public necessity is conclusively established by the record and acknowledged by the Supreme Court in its opinion—contravene the Fourteenth Amendment to the Constitution of the United States. It appears from the record that out of 259 stations from which live stock was shipped in 1910, scales have been installed at only 54. If the proposition underlying both the order of the Commission and the judgment of the court be sound, viz., that to install a stock scale at one station and to permit its use by buyers and sellers of stock, and not to afford a like scale at nearby stations, is such discrimination as will warrant an absolute order to install, then it must follow that whenever the Railway Company affords a scale at any station, the next adjoining station can require the installation of a

similar scale thereat. Pursuing this to its logical result the Railway Company would be required to install and maintain stock scales at each of the 259 stations, not because public necessity requires them, not because they are needed in the transaction of railway business, but solely for the convenience of buyers and sellers of stock in the consummation of their private transactions.

Passing for the moment the question of the right of a state to require of a carrier non-discriminatory service, we submit that the order of the Commission and the judgment of the court take the property of the defendant without due process of law because the record conclusively establishes that there is no public necessity for the scales in question in connection with services which the Railway Company is bound to afford, but, on the contrary, the record clearly establishes that there are a sufficient number of adequate track scales for the weighing of live stock received by the Railway Company for transportation.

We cannot conceive that it will be seriously contended by counsel for the state that there is in the record anything justifying the order of the Commission on the ground that the Railway Company is not maintaining, in connection with live stock tendered it for transportation, adequate facilities for weighing the same and advising the shipper of the amount of traffic he has delivered and the charges properly assessable for the transportation thereof. To assert such a proposition would be to disregard

(a) The reason, namely, discrimination, assigned by the Commission for the order;

(b) The issue tendered and heard in the trial court. Though no issue was made in the trial court as to whether or not the Railway Company now maintains sufficient and ade-

quate weighing facilities to meet the public necessities in connection with the service which it affords the public in the transportation of live stock, and though it may, therefore, well be said that the Railway Company has never had a hearing on that question, the evidence adduced is uncontradicted that sufficient weighing facilities for weighing live stock are maintained by the Railway Company at various points on its line.

(c) The facts stated in the opinion of the Supreme Court. The court, in summarizing the facts in the case, says (fol. 61):

"They are in substance as follows: * * * These stock scales are not used in any manner in the business transacted between the railway company and its patrons."

The Chief Justice, in his dissent, says:

"The facts stated in the opinion put it beyond dispute that the stock scales which defendant is here required to install at Bertha have no reference whatever to the transportation of live stock; they serve as a convenience to the dealer in the purchase of cattle, but the weights ascertained in those transactions do not, in any case, serve as a basis for transportation charges, nor do they in any way enter into the contract of shipment."

(d) The physical characteristic of the traffic in question, in that, by reason of knowledge of the number of head delivered, a shipper has complete information as to the quantity of traffic delivered. Hence there is not that necessity for weighing before the traffic leaves the presence of the shipper that exists in the case of traffic, the quantity of which cannot be ascertained by counting, but must be ascertained by weighing. It may be that the time will come when reasonable public necessity will require railway companies to weigh, when received, traffic of the character that must be weighed to ascertain the quantity delivered. Public necessity can never require such universal weighing except of traffic that must be weighed to

ascertain the amount delivered. In the case of live stock weighing is not needed in order to ascertain whether or not a railroad company has carried and delivered the number of head which it received for transportation. Weight in connection with live stock tendered for transportation is needed only as *a basis for computing transportation charges.*

The recently decided case of New Mexico Wool Growers Association vs. Atchison, Topeka & Santa Fe Railway Company, 145 Pac. Rep. 1077, is directly in point. The question involved was the right of the Corporation Commission of New Mexico to require the installation of hoof stock scales. In disposing of the matter the court says:

"The question as to whether hoof stock scales are a necessary facility for receiving and delivering freight, which the Corporation Commission is authorized to require railway companies to install and maintain, depends upon whether such scales are required or are reasonably necessary for such purpose. The burden of proof rested upon complainant to establish such fact, State of Washington ex rel. Oregon R. & N. Co. vs. Fairchild, 224 U. S. 510. Where the evidence shows that the rates for the shipment of live stock are based upon the minimum capacity of cars, in stated pounds, and that the weights are determined upon track scales in transit or at points of destination, and that hoof stock scales are never used for determining the weight upon which the tariff is based, and that in loading stock into the cars the shipper loads the same, not according to weight, but places in a given car only so much stock as will ride safely to the point of destination, without overcrowding and consequent suffocation, and that *the only useful purpose such scales would serve would be to enable the shipper to settle with those from whom he has purchased live stock, at the point of shipment, such hoof stock scales cannot reasonably be held to be a necessary facility for receiving and delivering freight.* (Italics are ours.)

The evidence taken before the Commission establishes the above facts. It further shows that at practically every point where such scales were asked to be installed by the railroad companies, private parties have already erected scales, which shippers are permitted to use upon payment of a slight compensation. As stated, the ascertainment of the weight of live stock, for the purpose of settlement between buyer and seller does not concern the railroad company, and it cannot justly be required to furnish a facility not a factor in the receipt or delivery of freight or express, or for the accommodation of passengers."

The maintenance of adequate and sufficient scales for transportation purposes is all that could in any event be exacted of the Railway Company. We confidently assert that there is nothing in the record even intimating that the Railway Company has not met its obligations to the public in that respect.

II.

CONCEDING, FOR THE SAKE OF ARGUMENT, THE AUTHORITY OF THE STATE TO EXACT OF THE RAILWAY COMPANY NON-DISCRIMINATORY SERVICE, THE ORDER IN QUESTION CONTRAVENES THE 14TH AMENDMENT TO THE CONSTITUTION IN THAT IT DOES NOT GIVE THE RAILWAY COMPANY THE ALTERNATIVE OF REMOVING THE ALLEGED DISCRIMINATION AGAINST BERTHA, BY WITHDRAWING FROM THE STOCKMEN AT EAGLE BEND AND HEWITT THE PRIVILEGE OF THE USE OF STOCK SCALES IN THE TRANSACTION OF THEIR PRIVATE BUSINESS.

We come now to the question whether or not the order of the Commission can be upheld upon the ground that it is a valid exertion of authority on the part of the state pursuant to the conceded power of the state to exact of the Railway Company non-discriminatory service in connection with intra-state traffic. The Railway Company contended, among other things, in the Supreme Court of the state, that

(a) The Railroad and Warehouse Commission had no statutory authority to require the Railway Company to install scales of the kind in question, even though it should find that reasonable public necessity required the maintenance of such scales by the Railway Company, the contention being that it is patent from the applicable statutory provisions that the authority of the Commission with respect to ordering in scales has been confined to certain track scales for the weighing of different kinds of carload traffic. The Supreme Court of the state did not pass upon this question directly, but inferentially held the Commission possessed of sufficient authority to require the scales in question in order to remove discrimination. We are not asking this court to review the statutes of the State of Minnesota for the purpose of ascertaining to what extent they repose authority in the Commission to require carriers to maintain sufficient scales to reasonably satisfy public and transportation necessities.

(b) The facts shown did not make a case of unjust discrimination. The Supreme Court affirmed the finding of fact made by the Commission, that a case of discrimination had been shown to exist. We do not ask this court to review this finding of fact. We apprehend the court would refuse to review the same. We do submit, however, that a state cannot, in the exertion of its power to exact non-discriminatory service of the Railway Company, compel the Railway Company to give its money to one person, because it is giving money to another, without affording the Railway Company the option of ceasing to give to said other person. To assert the contrary is to say that when a public carrier once affords to a favored community a facility which the carrier is not obligated, in the performance of its public duty, to afford, it must not only continue forever so to afford said facility, but must afford a like facility

to every other similar community. That a state cannot take the property of a public carrier in contravention of the Fourteenth Amendment, in order to compel non-discriminatory service, has been directly decided by this court in the case of *Missouri Pacific Railway Company vs. Nebraska, ex rel. Board of Transportation*, 164 U. S. 403. In that case certain farmers, under the name of the Elmwood Farmers' Alliance, applied to the Missouri Pacific Railway Company for an elevator site upon the right of way at the station of Elmwood. The application was refused and thereupon the applicant filed a complaint before the Board of Transportation, alleging, among other things, that the Railway Company had accorded sites upon its right of way at said station to other elevator interests, and that the refusal was a discrimination against the applicant, and effected an unreasonable preference and advantage to its competitors. The Board of Transportation found, among other things,

"Seventh. That granting of the right and privilege by the defendant to the elevators now standing upon its right of way and depot grounds at said station, and refusing to grant the same right and privilege to the complainant, is an unjust and unreasonable discrimination against the complainant, under the circumstances of this case.

Eighth. That the said respondent has discriminated against the complainant, and that it has unlawfully made and given a preference and advantage to Adams and Gilbert, and to Eells Brothers, owners and operators of elevators at said station."

The Board of Transportation ordered that the Railway Company "cease and discontinue discrimination against the complainant, and grant to said complainant the same facilities and privileges as granted to the owners and operators of the elevators now established at said station." The Railway Company failed to comply with the order of the Board of Trans-

portation, whereupon the state applied to the Supreme Court of the state for a writ of mandamus to compel the Railway Company to comply with said order, which writ was granted. The matter was brought to this court on writ of error. It appears from the decision of this court that the action of the Missouri Pacific Railway Company was clearly in violation of the statutes of Nebraska prohibiting unjust discrimination on the part of railway companies. This court says (page 414):

"The Supreme Court of Nebraska has construed this statute as authorizing the board of transportation to make the order questioned in this case, which required the railroad company to grant to the relators the right to erect an elevator upon its right of way at Elmwood station, on the same terms and conditions on which it had already granted to other persons rights to erect two elevators thereon.

* * * * *

"Upon the admitted facts of the case at bar, the railroad company had granted to two private firms the privilege of erecting elevators upon its right of way at Elmwood station; and had refused an application of other private persons, farmers in the neighborhood, for the privilege of erecting on that right of way a third elevator of sufficient capacity to store from time to time the grain produced upon their farms and upon those of their neighbors; and has been ordered by the board of transportation, and by the supreme court of the state, to grant to the applicants a location upon its right of way for the purpose of erecting thereon such an elevator. upon the like terms and conditions as in its grants to the owners of the two existing elevators.

"The only particular alleged in the complaint, and the only one, therefore, presented for our consideration in this case, in which the railroad company is supposed to have made an unjust discrimination against the complainants, or to have subjected them to an undue and unreasonable prejudice and disadvantage, in respect to traffic facilities, over other locations, or to have given an undue and unreasonable preference to other persons, is the refusal of the railroad company to grant to the complainants a location upon its right of way for the purpose of erecting

an elevator thereon, upon the terms and conditions upon which it had previously granted to other persons similar privileges to erect two other elevators. (page 415.)

* * * * *

"The order in question was not limited to temporary use of tracks, nor to the conduct of the business of the railway company. But it required the railway company to grant to the petitioners the right to build and maintain a permanent structure upon its right of way. (page 416.)

* * * * *

"To require the railroad company to grant to the petitioners a location on its right of way, for the erection of an elevator for the specified purpose of storing from time to time the grain of the petitioners and of neighboring farmers, is to compel the railroad company, against its will, to transfer an estate in part of the land which it owns and holds, under its charter, as its private property and for a public use, to an association of private individuals for the purpose of erecting and maintaining a building thereon for storing grain for their own benefit, without reserving any control of the use of such land, or of the building to be erected thereon, to the railroad company for the accommodation of its own business, or for the convenience of the public.

"This court, confining itself to what is necessary for the decision of the case before it, is unanimously of opinion that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation, for the private use of the petitioners. The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th Article of Amendment of the Constitution of the United States." (Citing cases.) (page 417.)

In a later and somewhat similar case, likewise arising in the State of Nebraska (*Missouri Pacific Railway Company vs. Nebraska*, 217 U. S., 196), the court says:

"But railroads, after all, are property protected by the Constitution, and there are constitutional limits to what

can be required of their owners under either the police power or any other ostensible justification for taking such property away.

Thus, it is at least open to question whether a railroad company could be required to deliver cattle at another than its own stockyard at the end of transit or cars elsewhere than at its own terminus, without extra charge, if it furnished reasonable accommodations. (page 206.) * * *

"On the face of it, the statute seems to require the railroad to pay for side tracks whether reasonable or not,—or if another form of expression be preferred, to declare that a demand for a side track to an elevator anywhere is reasonable, and that railroads must pay. Clearly, no such obligation is incident to their public duty, and to impose it goes beyond the limits of the police power." (page 207.)

The language of Mr. Justice Harlan, in *Donovan vs. Pennsylvania Company*, 199 U. S., 279, is also apposite at this point:

"It is not bound to so use its property that others, having no business with it, may make profit to themselves. Its property is to be deemed, in every legal sense, private property as between it and those of the general public who have no occasion to use it for purposes of transportation." (page 294.)

We call the court's attention to the distinction between the form of the order involved in the case at bar and the form of the order customarily entered by the Interstate Commerce Commission, designed to remove discrimination found to exist.

In the very recent case of the *Pennsylvania Company vs. United States*, (decided February 23, 1915) this court had under consideration the validity of an order of the Interstate Commerce Commission requiring the Pennsylvania Company to cease discriminating against the Buffalo, Rochester & Pittsburgh Railway Company in the matter of receiving traffic originating at or destined to industries located on the terminals of the former in the City of New Castle, Pennsylvania. It

will be observed that the order of the Commission simply required the Pennsylvania Company to cease discriminating against the Buffalo Company, by refusing to exchange traffic with said company at New Castle, so long as the Pennsylvania Company accorded the privilege of exchange of similar traffic to other roads entering New Castle. The Pennsylvania Company contended in this court, among other things, that the order of the Commission contravened that provision of the Act to Regulate Commerce, as amended, which provides that one company shall not be required to give the use of its tracks or terminals to another company, and also contravened the Fourteenth Amendment to the Constitution of the United States. In concluding its disposition of said contentions of the Pennsylvania Company, the court says:

"All that the Commission ordered was that the Company desist from the discriminatory practice here involved, and in so doing we think it exceeded neither its statutory authority nor any constitutional limitation, and that the District Court was right in so determining."

The Chief Justice, in dissenting from the opinion of the court, observes:

"The court now holds that this controversy involves merely a switching privilege *and the duty of one railroad not to refuse such privilege to another, or at all events if it permits it to one, to allow it to other roads on terms of equality.* By a necessary inference, therefore, the decision now made is concerned alone with that subject and does not in any degree whatever as a matter of law involve the right of one railroad company *to compel another to permit it to share in its terminal facilities.*" (Italics ours.)

If the order in the instant case required the Railway Company only to cease discriminating against Bertha, leaving it to the Railway Company to remove said discrimination either by (a) installing stock scales at Bertha, or (b) removing stock

scales at Eagle Bend and Hewitt, it would be in line with the order of the Interstate Commerce Commission in the above case and could not be held to take the property of the Railway Company contrary to the Fourteenth Amendment, because the Railway Company could comply therewith by ceasing to afford scales to stockmen at Hewitt and Eagle Bend. The order in the case at bar is mandatory in its form. If the Railway Company must comply therewith in order to remove discrimination, then the next community adjoining can show that it desires to further stock trading in its midst, and that such stock trading will be advanced if stockmen and farmers may have afforded, free of cost, for their own benefit and use, stock scales. So on down the line, until each of the 259 stations on the lines of the Great Northern in Minnesota, from which the records show stock is shipped, may exact the installation of stock scales for the sole convenience of private individuals in the conduct of their private business.

Applying the facts and reasoning in the opinion of this court in the case of *Missouri Pacific Railway Co. v. Nebraska*, 164 U. S. 403, *supra*, to the case at bar, we have this parallel. In the Nebraska case the railway company had granted to two private firms the privilege of erecting elevators upon its right of way, and it refused to other private persons the privilege of erecting a third elevator. It had been ordered by the Board of Transportation and by the Supreme Court of the state to grant to the applicants a location upon its right of way. In the case at bar, the railway company had placed at Hewitt and at Eagle Bend, two neighboring stations, a stock scale used by stockmen for their own convenience in the transaction of their private business, and had refused to place one at Bertha for that purpose. It has been ordered by the Railroad and Warehouse Commission and by the Supreme Court

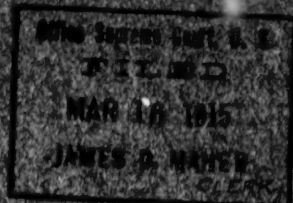
of the state to install a stock scale at Bertha. In the Nebraska case, the only particular in which the railroad company was supposed to have been guilty of unjust discrimination against the complainants was in refusing to grant the complainants a location upon the terms and conditions it had previously granted to other persons. In the case at bar, the only particular in which the railroad company is supposed to have made an unjust discrimination is in refusing to install the scales at Bertha, having done so at Hewitt and at Eagle Bend.

The court held in the Nebraska case that to require the railway company to grant the petitioners a location on its right of way for the erection of an elevator for the storing of grain of neighboring farmers was to compel the railway company against its will to transfer an estate in part of its property, which it owns and holds for public use, to private individuals for their own benefit.

It was unanimously of the opinion that this taking by the State of private property of the railway corporation without its consent for the private use of another was not due process of law, but was a violation of the 14th amendment. So in the case at bar, to require the railway company to spend its money, which is its property, in the installation of a scale for the use, convenience and benefit of stockmen, as private individuals, in the transaction of their private business, is the taking of private property of the railroad corporation without due process of law, and is a violation of the 14th article of Amendment of the Constitution of the United States.

We respectfully submit that the judgment of the Supreme Court of Minnesota should be reversed, and the order in question declared to be in contravention of the constitutional rights of the Railway Company.

E. C. LINDLEY,
SANFORD H. E. FREUND,
Attorneys for Great Northern
Railway Company, Plaintiff
in Error.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1914.

No. 325.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff
in Error.

THE STATE OF MINNESOTA EX REL RAILROAD
AND WAREHOUSE COMMISSION OF THE STATE
OF MINNESOTA, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
MINNESOTA.

TRUST OF DEFENDANT IN ERROR.

LYNDON A. SMITH,
Attorney General.

ALONZO J. EDGERTON,
Assistant Attorney General.



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1914.

No. 225.

**GREAT NORTHERN RAILWAY COMPANY, PLAINTIFF
IN ERROR,**

vs.

**THE STATE OF MINNESOTA EX REL. RAILROAD
AND WAREHOUSE COMMISSION OF THE STATE
OF MINNESOTA, DEFENDANT IN ERROR.**

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
MINNESOTA.**

BRIEF OF DEFENDANT IN ERROR.

I.

A writ of error brings to this court a record of a proceeding which was carried to final judgment in the Supreme Court of Minnesota. This proceeding was an application to the Railroad and Warehouse Commission of Minnesota

to order the Great Northern Railway Company to install stock scales at and in connection with its stock yards at Bertha, Minnesota. The application was granted and the railway company appealed from the order of the Railroad and Warehouse Commission granting this application. The appeal was heard by the district court in and for the county in which Bertha is located and the order of the Commission was affirmed. The Great Northern Railway Company then appealed to the Supreme Court of the State and the Supreme Court of the State affirmed the order of the district court so that, as appears upon pages 36 and 37 of the transcript of record, the order of the Railroad and Warehouse Commission of Minnesota affirmed by the District Court of Todd County, Minnesota, has been in all things affirmed by the Supreme Court of the State of Minnesota.

II.

Statement of Facts.

Bertha is a village in Todd County, Minnesota, and a railway station on the Great Northern Railway Company's line in the central part of the State of Minnesota. The country tributary to Bertha is principally adapted to and used for stock raising, and stock is shipped from that point to other points in the State and adjoining States, but principally to the city of South St. Paul, where there is the largest stock market in Minnesota. The facts in this case as found by the court are stated on pages 28 and 29 of the transcript of record, and the order of the Railroad and Warehouse Commission which states other facts is found on pages 21 and 22 of the transcript of record. The defendant believes that the evidence in the case justifies a more summary statement of facts which are supported by evidence taken at the trial of this action in the District Court of Todd County and are the facts last taken from the source from which the

facts considered by this court must be obtained. Defendant submits that the evidence shows, among other things, that the stock-raising industry in the vicinity of Bertha is increasing; that during 1909 eighteen cars of stock were shipped; in 1910 twenty-five cars; in 1911 twenty-seven cars; that it is customary at Bertha and at all stations in that vicinity to weigh cattle before making shipments; that stock scales are a facility used in connection with the buying, marketing, and shipping of stock; that stock is weighed each morning before loading; that the purpose of such weighing is not to determine the price to be paid for the stock, but it is for the purpose of determining the shrinkage; that appellant maintains no scales for the weighing of car-load lots at Bertha; that appellant maintains at Hewitt and Eagle Bend, stations on either side of Bertha, one a distance of four and a half and the other seven miles, respectively, stock yards with stock scales in connection therewith; that the territory tributary to Bertha is more adapted to stock raising than either Eagle Bend or Hewitt; that stock scales are a distinctive advantage and a great convenience, not only to the buyer, but to the locality; that covering a part of three years last past one hundred fifty cars of live stock were shipped from Eagle Bend, and one hundred sixty-two from Hewitt, while only seventy cars were shipped from Bertha; that without stock scales it is almost impossible to handle the business; that the scales are so equipped with railings that cattle and stock may be driven upon the scales and weighed with convenience and accuracy; that shippers of stock go from the Bertha territory to stations equipped with stock scales; that appellant has placed and now maintains these stock scales at fifty-four of its stations within the State; that at least twenty-three of these fifty-four stations stock shipments for the year 1911 did not exceed the shipments at Bertha.

III.

Questions of Law.

Four questions of law exist in this matter.

First. May stock scales be installed at and in connection with railroad stock yards?

Second. Has the Railroad and Warehouse Commission of Minnesota authority to require plaintiff-in-error to install stock scales at Bertha?

Third. Was the Great Northern Railway Company discriminating unlawfully in installing stock scales at stations each side of Bertha and not at Bertha?

Fourth. Does the order of the Commission amount to a confiscation of appellant's property in violation of the constitution of the United States?

IV.

Stock Scales May Be Installed at Expense of Railway Companies in Minnesota.

This question seems to have been answered by the Great Northern Railway Company by the fact that it has installed stock scales at fifty-four places on its lines in Minnesota. The list of these places is found on page 23 of the transcript of record. A practice which has been established by the railway company is to be deemed one of the recognized and proper contributions to the convenience of shippers and to the serving of the public by the railroads as well as the ade-

quate and suitable conducting of the business of the railway itself. The laws of Minnesota make weight a primary element in the charge which railroads can make for the transportation of commodities in carload lots, including live stock.

Section 4299, General Statutes of Minnesota for 1913, fixes the maximum rate which may be charged by a common carrier for the transportation of five carloads in the State of Minnesota. Class No. 14 of the classes made for the purpose of fixing rates includes sheep and cattle, and No. 16 includes sheep (in single-decked cars) and hogs. The rate is fixed per hundred pounds and varies according to the distance. Certain other rates are made based upon carload lots, that is, a minimum is fixed below which commodities may be considered as carload lots.

The defendant in error asserts that the weighing of stock which is to be shipped on the freight trains of a common carrier is within the duty of the railroad company and necessary to its proper conduct of such business the same as the weighing of excess baggage is a part of the proper conduct of the passenger business of such railroad or the weighing of express by express companies.

The shipper of carload lots is entitled to proper bills of lading showing the weight. Section 8, chapter 23, General Laws of 1907, provides:

"For all shipments of freight in carload lots on the railroads mentioned in section 1 of this act, proper bills of lading showing the date of delivery to such railroad company, the weights and the marks and numbers of each car so shipped, shall be issued by the railroad company and delivered to the shipper at the time of receiving such car or cars."

Gen. Stats. Minn., 1913, sec. 4372.

No scales are maintained by the company at Bertha, and no way is provided for complying with the provisions of this law. A compliance with the provisions of the foregoing

chapter renders it necessary for the company to install scales of some kind at Bertha. Plaintiff in error contends that this act contemplates track scales and not stock scales. The act does not say so. The thing required by the act is the furnishing of the bill of lading at the time of shipment showing the weights. It is not claimed that the statute cannot be complied with as far as stock is concerned by installing this scale. It is a matter of common knowledge that to install a six-ton stock scale would cost far less than track scales. Plaintiff in error fails to furnish any scales and endeavors to escape the order by saying the Commission has failed to specify some different scale.

We quote from the memorandum of the trial court:

"Not only does the importance of the business seem to warrant the installation of these scales, but under section 8, chapter 23, G. L. 1907, the common carrier is required to furnish to the shipper at the time of shipment, a bill of lading showing among other things the weight of such shipment; that it would seem renders the scales not only a convenience, but an actual necessity in order that the law may be complied with."

V.

The Railroad and Warehouse Commission Has Authority to Require the Installation of Stock Scales by Railroad Companies.

Plaintiff in error contends that specific authority is necessary, in order to justify the State Railroad Commission in issuing an order to install stock scales, while defendant maintains that general authority is sufficient. If plaintiff's position is correct, every facility necessary to promote the convenience of the public must be first specified by the Legislature. Every time an addition, repair, change of station, change in the mode of conducting its business become necessary, the specific item requires legislative action. This

would require the Legislature to adopt a schedule of the many facilities over which the Railroad and Warehouse Commission now exercise jurisdiction. If it is necessary to specify each facility, then it follows that the circumstances under which the same may be required must also be stated by the Legislature. This would result in depriving the Commission of all power.

The general powers relied upon by the Commission include:

Authority to generally supervise all common carriers.

(A) Section 4171, General Statutes of Minnesota, 1913, vests the Commission with authority to generally supervise all common carriers. Section 4178, same compilation, enumerates its powers. See this brief, page —.

We start with the proposition that a railroad company, holding itself out as a common carrier of live stock, is required to furnish suitable and necessary facilities for handling the same. As stated in the case of Covington Stock Yards Company *vs.* Keith, 139 U. S., 128:

“A railroad company, holding itself out as a carrier of live stock, is under a legal obligation arising out of the nature of its employment to provide suitable and necessary means and facilities for receiving live stock that may be offered for shipment over its road and connections as well as for discharging such live stock after it reaches the place to which it is consigned. The duty to receive such stock cannot be efficiently discharged, at least in a town or city, without the aid of enclosed yards in which the stock offered for shipment can be received and handled with safety and without inconvenience to the public.”

The evidence shows that shippers of live stock weigh the stock before shipment; that the stock is weighed, among other purposes, to determine the shrinkage. If any claim is to be made against the company for a failure to deliver in proper time, the weight at the time of shipment must necessarily be the basis of that claim between the shipper

and the company. The Commission found as a fact that the facility in question was reasonable and necessary. No evidence was offered to controvert the above facts or overcome the *prima facie* facts found by the Commission.

Section 4240, General Statutes of 1913, provides:

"In any action or proceeding brought to enforce any order of the Commission, or when such order is brought in question in any of the courts of the State, it shall be *prima facie* evidence of the facts therein stated."

See Appendix A, page 21.

We maintain that in the absence of specific authority the Railroad and Warehouse Commission has the general authority to require railroad companies to supply the necessary demands of the public along transportation lines; that it has a right to require the company to build and maintain such facilities as are necessary for the public needs. Upon this proposition we quote from *State ex rel. Railroad and Warehouse Commission vs. Minneapolis and St. Louis Railroad Company*, 76 Minn., 469:

"But there is no doubt of the power of the Commission under the general Railroad and Warehouse Commission act, to require a railroad company to provide a suitable depot and passenger waiting room at any place incorporated or unincorporated, where public necessity or convenience reasonably requires it to be done."

In the case of *Gladson vs. Minnesota*, 166 U. S., 427, it is said:

"It may prescribe the location and construction, and the plan of construction of the road, the rate of speed at which the train shall run, and the places at which they shall stop, and to make any other reasonable regulations for their management in order to secure the objects of the incorporation, and the safety, good order, convenience, and comfort of the passengers and of the public."

In North Carolina the statute is silent upon the specific authority of the Commission to require the railroad company to install track scales, but the court in discussing this proposition in the case of *Corporation Commission vs. Railroad Company*, 139 N. C., 133, says:

"Track scales are not specifically mentioned in the act, but there is the power to require depot accommodations commensurate with the business and revenue at the receiving stations, and to require repairs and additions to any stations, the removal or establishment of a station, the raising or lowering of the tracks, etc., to promote the convenience or accommodation of the public. There was no intention to give a schedule of the thousands of appliances used in handling the business of common carriers, nor to enumerate the countless dealings between them or their patrons, which such commission should supervise. The clearly declared purpose was to put the control and supervision of the whole matter into the hands of an impartial Commission with powers to make rules and orders subject to the right of appeal by either party, the shipper or the carrier, to the courts, instead of leaving such dealings to the unrestricted will of one party, the carrier."

(B) The construction which the legislature places upon the authority of the Commission as found in section 4239, General Statutes of 1913:

"The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and common carrier, and the Commission shall at all times do everything to facilitate commerce and the safety, convenience and comfort of passengers and employees."

Quoting from the memorandum of the trial court we find:

"The first question to be considered here is whether these stock scales are a necessary means and facility for receiving and shipping stock over appellant's line,

or in other words, are such scales at the shipping point in question an essential to 'efficient transportation facilities' within the meaning of section 1988, R. L., 1905 [sec. 4239, G. S., 1913]. Having in mind the facts as shown by the undisputed evidence, it seems to me the question should be answered in the affirmative. The evidence shows that it is desirable and the universal (practice), where it is possible to do so, for shippers to weigh out their shipments at the time of loading the stock on cars."

If, as found by the Commission, undisputed by the evidence, and found by the trial court, this facility is a necessary one in the proper handling, marketing, and shipping of stock, is it not the duty of the carrier to furnish this facility within the rule laid down in the Covington Stock Yards case?

VI.

Attitude of Courts Toward Orders of Railroad and Warehouse Commission.

The attitude of the courts of Minnesota toward the acts of the Railroad and Warehouse Commission is affected, if not controlled, by two considerations—first, the statutes upon the subject, and, second, the precedents founded in reason and common law as to the weight to be given such orders.

The statute bearing upon this question contains the following, among other, clauses upon the weight to be given to these orders in cases of appeal therefrom:

"Such findings of fact (as are contained in the orders of the Commission) shall be *prima facie* evidence of the matters therein stated, and the order shall be *prima facie* reasonable and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court (appellate court) shall determine that the order appealed from is lawful and

reasonable, it shall be affirmed and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable it shall be vacated and set aside."

Section 4192, General Statutes of Minnesota for 1913.

In Appendix A, hereto annexed, is found section 4240 of said General Statutes, which makes the order of the Railroad and Warehouse Commission *prima facie* evidence of the facts therein stated.

The statement of the courts as to their attitude toward the orders of the Railroad and Warehouse Commission is well stated in the case of *State vs. Great Northern Ry. Co.*, 123 Minn., 463, 467, as follows:

"In the [then] present case it must be presumed that the circumstances justified the order of the Commission until it is shown affirmatively that furnishing the facilities required by such order will impose an unreasonable burden upon the company.

"The question as to what accommodations are reasonably necessary to afford proper transportation facilities to the public is legislative or administrative and not judicial in its nature; and the courts can interfere with the action of the body entrusted with the power and duty to determine such questions only when such action oversteps the limitations, constitutional or otherwise, placed upon the exercise of such power."

The same general proposition is stated in the case of *Railroad and Warehouse Commission vs. Great Northern Ry. Co.*, 124 Minn., 533.

VII.

Cases and Argument of Plaintiff in Error Answered.

The plaintiff in error is mistaken in the idea that the question of discrimination as between Bertha and the villages adjacent on either side (Eagle Bend and Hewitt) is the main issue. When the evidence was being taken, the attorney for the plaintiff said:

"Our position is, unless there is some legal obligation resting upon us to furnish these stock scales, the fact that we furnished them for some other place, unless the law compels, cannot lay the presumption that we ought to lay them at Bertha."

* * * * *

Mr. MILLS: Yes, that is the main feature in the case."

Transcript of Record, page 5.

The State's understanding of this remark is that Judge Mills in substance said that if these scales were not a railway facility, no discrimination could arise. The fundamental proposition was that the stock scales were a facility, and being a railway facility, the failure to give them to Bertha, when the railway gave them to Hewitt and Eagle Bend, constituted a discrimination. If these scales had no relation to railroad business, then the railway was not discriminating against Bertha by omitting to give Bertha scales at its stock yard. That this is a correct interpretation of the order of the Railroad and Warehouse Commission is apparent upon reading the order. It says:

"The Commission finds that the amount of stock shipped from this station, as well as the discrimination herein referred to, make it reasonable and necessary that the Great Northern Railway Company erect and lay a six-ton scale for weighing the stock in its stock yard at Bertha."

Page 22, Transcript.

The propositions stated in the brief of the plaintiff in error, as produced in the record, do not seem to the State to be the propositions sustained by either the Railroad and Warehouse Commission, the trial court or the State Supreme Court. Each of them found in substance the fundamental question to be whether or not the stock scales in question were such an instrumentality of commerce as the State Railroad and Warehouse Commission could order a railway company to install at a station and stock yard in an agricultural village in central Minnesota. The question of discrimination was not absent nor ignored.

One of the cases relied on by plaintiff in error as in point and hostile to the State is the New Mexico Wool Growers Association *vs.* Atchison, T. & S. F. Ry. Co., 145 Pac. Rep., 1077 (January 9, 1915). The difference between that case and this case is best shown by a quotation from the decision of the State Corporation Commission of New Mexico in the former case and the District Court of Minnesota in the latter case. The State Corporation Commission of New Mexico found that—

“the installation and maintenance of hoof live stock scales in stock yards is not such a facility as is contemplated in the language of the Constitution of the State of New Mexico prescribing the matters and things over which this Commission shall exercise jurisdiction, in that it does not constitute a part of the transportation facility; * * * does not constitute a facility as a means of determining the weight upon any given shipment wherein the transportation company is interested. * * * It is a common practice and the invariable rule of live stock shippers that they do not in any wise conform to such weights, but load the car with sufficient number of sheep or cattle, or other live stock, so as not to overload and yet carry the maximum number of head of such live stock as will comfortably ride in a car of a given space capacity.”

The District Court of Minnesota (page 29 of Transcript of Record) finds that

"stock scales such as are specified in the order appealed from are a facility used in the buying, marketing and shipping of live stock and without such scales said business is rendered more difficult and inconvenient, and that as between the shipper and the appellant, such scales are necessary in order to ascertain the lawful freight charges to be paid by the shipper and to enable appellant to properly furnish the shipper with the bill of lading required by statute."

Another case relied on by plaintiff is *Missouri Pacific Ry. Co. vs. Nebraska*, 164 U. S., 403. The difference between that case and this which renders that case inapplicable is that in the Nebraska case

"the petitioners were private individuals voluntarily associated together for their own benefit. They do not appear to have been incorporated for any public purpose whatever; or to have themselves intended to establish an elevator for the use of the public. On the contrary their own application to the railroad company as recited in their complaint to the Board of Transportation was only 'for a location on the right of way at Elmwood station aforesaid for the erection of an elevator of sufficient capacity to store from time to time the cereal products of the farms and leaseholds of complainants aforesaid, as well as the products of other neighboring farms'" (pages 416-417).

This Nebraska case is a case where the application was for the erection of an elevator in which to store, for substantially private purposes, grain for their own benefit without reserving any control of the use of such land or the building for the convenience of the public or railroad business. In the present case the facility asked for is largely related to the needs of the railroad company, an instrument

in its doing of that which is required of it by law and an aid and convenience in the transportation of live stock, which transportation constitutes a large part of the traffic of the railroad in question.

Nothing in any of the cases cited by plaintiff in error destroys the effect of the decision of the Supreme Court of Minnesota in this case, the gist of which is stated in the syllabus written by the judge preparing the opinion, which syllabus is as follows:

"It sufficiently appears from the evidence and from the fact that the appellant has voluntarily installed stock scales at fifty-four (54) of its stations in Minnesota, that such scales are a convenience pertaining to the transportation of stock, and that its refusal to furnish them at the station Bertha was such a discrimination against that place that the Railroad and Warehouse Commission had authority to require them to be supplied at that station."

State vs. Great N. Ry. Co., 122 Minn., 55.

The other cases cited by plaintiff in error are no more in point than those heretofore discussed.

VIII.

An Illegal Discrimination Was Shown.

The plaintiff company has granted to Eagle Bend and Hewitt, stations within the same common territory as Bertha, certain facilities for handling live stock which it withholds or denies to the latter station. These two stations having these facilities are in direct competition with Bertha.

Common carriers are prohibited from giving unequal or unreasonable preference or advantages to persons or localities. Section 2009 R. L., 1905 (sec. 4332, G. S., 1913), provides:

"It shall be unlawful for any common carrier to make or give any unequal or unreasonable prefer-

ence or advantage to any particular *person*, company, firm, corporation or *locality*, or to any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any unequal or unreasonable prejudice in any respect whatsoever."

The fact that the country tributary to Hewitt and Eagle Bend is not adapted and used for cattle raising as extensively as Bertha, coupled with the fact that 47 cars were shipped from Hewitt and 51 cars from Eagle Bend during the year 1911, while only 27 cars were shipped from Bertha, are strong circumstances that the maintenance of these scales is a preference in favor of these places. It is contended that the company was not required to erect and maintain stock scales at Eagle Bend and Hewitt; that it did so voluntarily and hence is under no obligation to maintain scales at only such places as it may see fit. Assuming, for the purpose of argument, that the company was under no legal obligation to maintain scales at these places, yet if it granted these privileges to these stations it cannot refuse the same to Bertha, providing the conditions are the same. In discussing the proposition of discrimination our Supreme Court in the case of *Farwell Farmers' Warehouse Association vs. M., St. P. & S. Ste. Ry. Co.*, 55 Minn., 13, says:

"Railroad corporations are *quasi* public corporations and enjoy privileges and franchises granted by the State in consideration of the general benefits which the public may be expected to derive from the operations of the roads. They must therefore subject to certain necessary and proper limitations which the law will recognize be operated so as to reasonably accommodate the business and subserve the best interests of the public. One of the most important of these interests in an agricultural community is the marketing and transportation of grain and the price may in any particular case be affected to any greater or less extent by the facilities for transportation

afforded, and the opportunity for competition by purchasers. It is undoubtedly a subject proper for legislative cognizance. It is an essential condition to the right of eminent domain by a railroad corporation that all the people should have the right to use the road on equal terms, and it is the policy of the law not to permit such corporations to grant special privileges to any persons which are denied to others under like conditions."

The company supplied the stations on either side of Bertha with scales. It refused to install them at Bertha. This was such a discrimination as necessarily resulted in a decrease in the business at this station. The figures showing the number of cars shipped from Bertha compared with the number of cars shipped from Eagle Bend and Hewitt indicate the correctness of this proposition.

Denying Bertha the right to these stock scales, while recognizing the right to Hewitt and Eagle Bend to these scales, clearly shows a discrimination, not only against the locality, but against each shipper for whose rival the plaintiff does weighing.

Again, quoting from the case of *Corporation Commission vs. Railroad*, 139 N. C., 133:

"This appeal rests solely upon the denial of power to make any order in the premises. It cannot be said that there was no evidence tending to show that the order was reasonable. The defendant had put in track scales at other points where fewer carloads were shipped. It offered to put in the scales if the petitioner would pay higher rates (amounting annually to nearly the full cost of scales and of putting them in) than was paid by buyers at points where such scales were put in. Indeed this was a discrimination against the petitioner."

The order of the Commission recognizes that it is not proper for the Railway Company to foster the live stock business at Hewitt and Eagle Bend by giving to these vil-

lages certain facilities, and denying to Bertha, a competitive stock market, the same facilities. The Railway Company is bound to deal fairly with the public. To extend reasonable facilities for the transportation of property and to put all patrons and localities upon an absolute equality. As stated by Elliott on Corporations, section 1468:

"It is, we think, safe to say that the rule is that a railroad carrier, so far as concerns the receipt and transportation of goods, however it may be as to rates of freight, must, where the conditions and circumstances are identical, treat all shippers alike. It cannot furnish facilities to some shippers and deny them to other shippers unless there is a difference in conditions or circumstances, such as makes the discrimination a just one. Public policy forbids that common carriers should be permitted to favor one shipper, or one class of shippers, in discharging the general duty to accept and carry goods to the prejudice of others."

The Interstate Commerce Commission, in considering a case involving a discrimination under the Interstate Commerce Act, which is similar to our statute, says:

"A common carrier is under obligation to serve the public equally and justly. It is unlawful for him to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or *locality*."

Riddle *vs.* New York, L. E. & W. R. Co., 1, I. C. C. Rep., 787.

Suppose the company gave Eagle Bend or Hewitt a less rate for shipments of cattle than it gave to Bertha. This would clearly be a discrimination. Why does not the same principle apply to facilities as well as the matter of freight charges?

The Supreme Court of Wisconsin says:

"But it is not the duty of such carrier to discriminate in favor of the business of one station to the

prejudice and injury of the business of another station of the same importance."

Ayers vs. Chicago & N. W. Ry. Co., 71 Wis., 372

If the preference complained of is permitted, it is clear that the exercise of such a power would be disastrous to the prosperity of the shippers so discriminated against.

IX.

The Order of the Commission Does Not Violate the Constitution of the United States.

It does not seem that any constitutional question is involved. It is conceded that the Commission would have no authority to require the railroad company to make any unnecessary or useless expenditure of money. If the facility, however, is a necessary and proper one, it is now well settled that the carrier is bound to furnish the same without compensation.

Mpls. & St. L. R. R. Co. vs. Minn., 193 U. S., 53.

As stated in the case of *Wisconsin, Minnesota & Pacific R. R. Co. vs. Jacobson*, 179 U. S., 287:

"Although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error."

In the case of *Washington vs. Fairchild*, 224 U. S., 510, 528, the court said:

"If the order involves the use of property needed in the discharge of those duties which the carrier is bound to perform, then upon proof of the necessity, the order will be granted, even though the furnishing of such necessary facilities may occasion an incidental pecuniary loss."

The following sentence from the opinion in *Atlantic Coast Line vs. North Carolina Corporations Commission*, 206 U. S., 1, 26, is here in point:

"It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable. * * * The fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one."

The Supreme Court of Minnesota said, in *State vs. Northern Pacific Ry. Co.*, 90 Minn., 277, 281:

"It would seem to be now well settled, upon principles of public policy, that the decisive question in such a case should not be the convenience or benefit of railway companies alone. They undoubtedly have a right to consider their own profit and convenience largely, but also owe duties to the public, for which reasons they have been permitted to establish their roads, and enjoy many substantial privileges depending upon benefits which will accrue to patrons adjacent to their lines, and incidental to the obligations thus imposed must be the duty to treat the public fairly, and furnish them with reasonable facilities to enjoy the benefits they confer."

In the case of *Chicago, R. I. & P. Ry. Co. vs. Nebraska Railway Commission*, 85 Neb., 818, the court held that—

"the mere fact that the income from the expenditure at a particular point upon its line may not earn a fair return upon the capital invested at that point can only be considered in connection with the revenue from the entire operation of the road within the State at least."

Respectfully submitted,

LYNDON A. SMITH,

Attorney General.

ALONZO J. EDGERTON,

Assistant Attorney General.

APPENDIX "A."

Laws of Minnesota Having a Bearing upon the Installation of Stock Scales in Minnesota upon Order of the Railroad and Warehouse Commission.

References are to the sections of the General Statutes of Minnesota 1913.

Section 4178. General Authority of Commission: "The Commission shall inquire into the management of the business of all carriers and warehousemen subject to their supervision, and shall keep itself informed as to the manner in which the same is conducted. * * * Whenever in the judgment of the Commission any common carrier fails in any respect to comply with the law, or any repairs are necessary upon its railroad, or any reasonable addition to or change of its stations, station houses or transfer facilities or change in the mode of operating its road or conducting its business will promote the security or convenience of the public, the Commission, by a written order to be served as a summons in a civil action, shall require the compliance with such law or the making of such repairs, additions or change."

Section 4239. Interpretation of Railroad Legislation: "The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and common carriers, and the Commission shall at all times do everything within the scope of its powers to secure such ends, and to facilitate commerce and the safety, convenience and comfort of passengers and employees."

Section 4240. The Presumption as to Commission's Orders: "In any action or proceeding brought to enforce any order of the Commission, or when such order is brought in question in any of the courts

of the State, it shall be *prima facie* evidence of the facts therein stated."

Section 4372. Weight or Stock at Time of Delivery Required To Be Given Shipper: "For all shipments of freight in carload lots on railroads mentioned in section one (4365) of this act, proper bills of lading showing the date of delivery to such railroad company, the weights and the marks and numbers of each car so shipped, shall be issued by the railroad company and delivered to the shipper at the time of receiving such car or cars, which bill of lading when offered by any party in any cause pending in any court of this State shall be received and admitted in evidence by such court as *prima facie* evidence of the time when delivery of such car or cars was made by the consignor to such railroad company and the weights and the contents thereof when so delivered to such company."

Section 4298. Classification of Commodities: "For the purpose of this act the commodities hereunder named are classified as follows: * * * Sheep (when carried in double-decked cars) and cattle shall constitute class *fourteen*; sheep (when carried in single-decked cars) and hogs shall constitute class *fifteen*."

Section 4299. Maximum rates: "The following are hereby established and declared to be the reasonable maximum rates to be charged by railroad companies as common carriers of property in the State of Minnesota for the transportation, in carload lots, of the commodities belonging to the classes named in section 1 [4298] of this act, between stations in the State of Minnesota for the distances named in the following schedule, to wit:

| Distance in Miles. | | Rate for commodities in classification No. 14 in cents per 100 pounds. | Rate for commodities in classification No. 15 in cents per 100 pounds. |
|--------------------|---------|--|--|
| | * * * * | | |
| 5 | | 4.4 | 4.9 |
| 10 | | 5. | 5.5 |
| 15 | * * * | 5.5 | 6.3 |
| 20 | | 6.3 | 6.8 |
| 25 | | 6.7 | 7.6 |
| x * |* | | |
| x [to] |* | | |
| x * |* | | |
| 400 | | 20.7 | 23.3 |

Section 4300. * * * Weight of Carload * * *

"In order to constitute a carload within the meaning of this act, the weight of the commodities in any one car shall be at least as follows: * * * class *fourteen*, nineteen thousand pounds; class *fifteen*, fifteen thousand pounds."

**GREAT NORTHERN RAILWAY COMPANY *v.*
STATE OF MINNESOTA EX REL. STATE
RAILROAD & WAREHOUSE COMMISSION.**

**ERROR TO THE SUPREME COURT OF THE STATE OF
MINNESOTA.**

No. 225. Argued April 16, 1915.—Decided June 14, 1915.

An order of a state railroad commission requiring a railroad company to install and maintain scales amounts to a taking of the company's property; and, if the order is arbitrary or unreasonable, the taking is without due process of law and in violation of the Fourteenth Amendment.

The facts established must be adequate as a matter of law to support a finding of requisite public necessity in justifying an order of a state railroad commission to require a railroad company to expend money—the mere declaration of the commission is not conclusive.

The business of a railroad is transportation and to supply the public

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Argument for the Plaintiff in Error.

with conveniences not connected therewith is no part of its ordinary duty.

Even though the state railroad commission may have power conferred by statute to require railroad companies to supply necessary demands of the public along their transportation lines, the Commission may only require them to supply such demands as are within the duty of a railroad company.

Where facilities afforded by a railroad company are at certain of its stations outside of its actual duty to supply but produce discrimination, the railroad commission of the State may not absolutely require it to supply such facilities at every station in order to inhibit discrimination; it must give the company the opportunity of discontinuing furnishing the facilities where supplied and thus to avoid discrimination in that manner if it sees fit so to do.

Possessions of a railroad company are subject to its public duty but beyond this and within charter limits, like other owners of private property, the company may control its own affairs.

An order of the Minnesota State Railroad Commission requiring a railroad company to install weighing scales at a station similar to those installed at some of its stations in order to abate discrimination held arbitrary and unreasonable as it did not give the company the alternative right of discontinuing the scales at those stations where they were installed and abating the discrimination in that manner, as the scales while conveniences of the public had no direct part in transportation.

122 Minnesota, 55, reversed.

THE facts, which involve the power of a State Railroad Commission to require a carrier to erect weighing scales at stations, and the validity of an order of the Minnesota Railroad and Warehouse Commission, are stated in the opinion.

Mr. E. C. Lindley and Mr. Sanford H. E. Freund for plaintiff in error:

The order of the Commission requiring the railway company to install the scales in question for the convenience of stockmen and farmers in connection with private transactions deprives the railway company of its property without due process of law.

Conceding for the sake of argument the authority of the State to exact of the railway company non-discriminatory service, the order in question contravenes the Fourteenth Amendment to the Constitution in that it does not give the railway company the alternative of removing the alleged discrimination against Bertha by withdrawing from the stockmen at Eagle Bend and Hewitt the privilege of the use of stock scales in the transaction of their private business.

In support of these contentions, see *Donovan v. Pennsylvania Co.*, 199 U. S. 279; *Mo. Pac. Ry. v. Nebraska*, 164 U. S. 403; *Mo. Pacific Ry. v. Nebraska*, 217 U. S. 196; *New Mexico Wool Growers v. Atahison, Topeka & Santa Fe Ry.*, 145 Pac. Rep. 1077; *Pennsylvania Co. v. United States*, 236 U. S. 351; *Oregon R. R. & Nav. Co. v. Fairchild*, 224 U. S. 409.

Mr. Lyndon A. Smith, Attorney General of the State of Minnesota, with whom *Mr. Alonzo J. Edgerton*, Assistant Attorney General of the State of Minnesota, was on the brief, for defendant in error:

Stock scales are railroad facilities, and therefore the State Railway Commission has authority to order in stock scales.

Authority of Commission should be so interpreted as to sustain its action.

Discrimination existed before and without this order.

Confiscation is never due to ordering devices useful in railroad work.

In support of these contentions see *Atl. Coast Line v. Nor. Car. Corp. Comm.*, 206 U. S. 1; *Ayers v. Chicago & N. W. Ry.*, 71 Wisconsin, 372; *Chic., R. I. & Pac. Ry. v. Nebraska*, 85 Nebraska, 818; *Corporation Comm. v. Railroad*, 139 N. Car. 133; *Covington Stock Yards Co. v. Keith*, 139 U. S. 128; *Farwell Warehouse v. Minn., St. P. & S. Ste. M. Ry.*, 55 Minnesota, 13; *Gladson v. G. Nor. Ry.*, 166 U. S. 127;

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Minn. & St. P. R. R. v. Minnesota, 193 U. S. 53; *Mo. Pac. Ry. v. Nebraska*, 164 U. S. 403; *Minnesota v. Minn. & St. L. R. R.*, 76 Minnesota, 469; *New Mexico Wool Growers v. Atchison, T. & S. F. Ry.*, 145 Pac. Rep. 1077; *Railroad Comm. v. G. Nor. Ry.*, 124 Minnesota, 533; *Riddle v. New York, L. E. & W. Ry.*, 1 I. C. C. 787; *Minnesota v. G. Nor. Ry.*, 123 Minnesota, 463; *Minnesota v. Nor. Pac. Ry.*, 90 Minnesota, 227; *Washington v. Fairchild*, 224 U. S. 510; *Wisconsin &c. R. R. v. Jacobson*, 179 U. S. 287.

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

An order of the Minnesota Railroad & Warehouse Commission (October 26, 1911) directing the Great Northern Railway Company to erect within forty-five days at least a six-ton scale in its stockyard at the village Bertha, Todd County, was sustained by the Supreme Court of the State (122 Minnesota, 55, 57-58); the cause is here by writ of error; and it is contended that enforcement of order, as promulgated, would deprive the Railway of its property without due process of law contrary to the inhibition of the Fourteenth Amendment. The Supreme Court said:

"At the trial the appellant offered no evidence but rested upon the evidence presented by the respondent and the facts are undisputed. They are in substance as follows: That in the year 1910 stock was shipped in carload lots from 259 of appellant's stations in the State of Minnesota; that the number of carloads so shipped from the different stations varied from one at each of 32 stations to 414 at the station of Jasper; that appellant has installed stock scales, each of six ton capacity, at 54 of these stations; that these scales are located adjacent to the stockyards, but are not adjacent to nor connected with the railway track or buildings; that they are convenient for and are

used by dealers and stock raisers in buying and selling, but no obligation to ship over the railway is imposed by such use; that stock raisers who would otherwise market their stock at Bertha sometimes take it to Hewitt or Eagle Bend, a longer distance, in order to have the use of the scales installed at those places; that such scales tend to draw the stock business to and concentrate it at the places where they are located; that where these scales are available shippers are accustomed to weigh their stock, for their own convenience and information, immediately before loading for shipment, but these weights are not used as a basis for freight charges, nor in any transactions between the shipper and the railway company, nor in sales made at the terminal stockyards; that, after stock is loaded, the carload is weighed at some suitable point upon track scales which are under the supervision of the State, and the freight charges and all the transactions between the shipper and the company are based exclusively upon this weight; and that these stock scales are not used in any manner in the business transacted between the railway company and its patrons.

"The witnesses testifying for respondent insisted that stock scales were a convenience, if not a necessity, in dealing in stock, and that a town having such scales possessed an advantage, as a stock market, over a town that did not, but frankly admitted that these scales had no direct part in the business of transportation, nor in the business of selling at the terminal yards.

"As scales are a convenience and, probably, a necessity in dealing in stock, and tend to cause stock to be collected for shipment at the places where they are available, to the disadvantage of those places where they are not available, and are undoubtedly furnished for the purpose and with the view of securing the transportation of stock from points at which they are located, it is the opinion of a majority of the members of the court that the evidence

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Opinion of the Court.

submitted, together with the fact that the company considered such scales of sufficient importance to its business to furnish them voluntarily at 54 of its stockyards in this State, is sufficient to support the finding that such scales pertain to the transportation facilities which the commission may require of a railroad and that the refusal to supply such scales to the station in question was a discrimination against it."

Manifestly, if the order is enforced plaintiff in error's property will be taken. Whether this would be without due process of law depends upon the special circumstances.

The applicable principles were announced in *Oregon Railroad &c. Co. v. Fairchild*, 224 U. S. 510, 524. A taking of railroad property under administrative regulation must "be tested by considering whether, in view of all the facts, the taking was arbitrary and unreasonable or was justified by the public necessities which the carrier could lawfully be compelled to meet." The facts being established the question then presented is whether as matter of law they are adequate to support a finding of requisite public necessity—the mere declaration of a commission is not conclusive. *Interstate Commerce Commission v. Louis. & Nash. Railroad*, 227 U. S. 88, 91; *Florida East Coast Line v. United States*, 234 U. S. 167, 185.

It appears from the Supreme Court's findings that sixteen scales installed by the Railway at 54 of its 259 stock-shipping stations in Minnesota were not used in transactions between carrier and shippers. All witnesses declared these instruments had no direct part in transportation or selling at terminal yards but were convenient in stock dealings and a station possessing one had an advantage over the place where none existed.

The business of a railroad is transportation and to supply the public with conveniences not connected therewith is no part of its ordinary duty. The obvious purpose of the challenged order was to enforce installation at Bertha

of a scale like those at Eagle Bend and Hewitt and dedicated to same use. Under admitted facts, unless justified by alleged unlawful discrimination, we think this was an arbitrary and unreasonable exercise of power. It is no answer to say, as counsel do, that the Commission has "general authority to require railroad companies to supply the necessary demands of the public along transportation lines; that it has a right to require the company to build and maintain such facilities as are necessary for the public needs." The demands upon a carrier which lawfully may be made are limited by its duty, and the present record conclusively shows the required structure had no direct relation thereto. See *New Mexico Wool Growers' Association v. Atchison, Topeka & Santa Fe Ry.*, 145 Pac. Rep. 1077.

The Railway Company does not presently controvert the finding that scales at Eagle Bend and Hewitt brought about discrimination, but maintains the Commission acted arbitrarily and unreasonably in seeking to eliminate this by peremptorily requiring construction of another without giving opportunity to accomplish the same result through discontinuing the use of those already installed. This contention is sound and must be sustained. Conceding power to inhibit discrimination the Commission could not exercise it unreasonably by needlessly taking property or, what comes to the same thing, obliging incurrence of expense wholly unnecessary. It by no means follows, simply because a railroad voluntarily supplies a convenience at some stations which attracts trade, that it can be commanded positively to do likewise at other places along the line. A railroad's possessions are subject to its public duty but beyond this and within charter limits, like other owners of private property, it may control its own affairs. Discontinuing the use of existing scales would abate the alleged discrimination and probably entail little, if any, outlay. The Commission's order pre-

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cluded use of this method to bring about lawful conditions and therein, we think, was plainly arbitrary and unreasonable. *Missouri Pacific Railway v. Nebraska*, 164 U. S. 403, 417; *Donovan v. Pennsylvania Company*, 199 U. S. 279, 293; *Missouri Pacific Railway v. Nebraska*, 217 U. S. 196, 206.

The judgment of the court below is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.
